Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

STATE OF MINNESOTA, by its Attorney General, Mike Hatch,

Petitioner,

v.

MINNESOTA TWINS PARTNERSHIP, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Minnesota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the antitrust exemption for Organized Baseball, recognized by this Court in *Federal Baseball v. National League*, 259 U.S. 200 (1922), *Toolson v. New York Yankees*, 346 U.S. 356 (1952) and *Flood v. Kuhn*, 407 U.S. 258 (1972), preclude a State from investigating possible conspiracies by Organized Baseball to boycott, or threaten to boycott, communities that do not provide publicly-financed ballparks?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(a) Petitioner Mike Hatch is the Attorney General for the State of Minnesota and was the Respondent in the Minnesota Supreme Court. General Hatch's predecessor, Hubert H. Humphrey III, was the Respondent in the Ramsey County District Court and Minnesota Court of Appeals proceedings.

(b) Respondent Minnesota Twins Partnership ("Minnesota Twins" or "Twins") is a Minnesota partnership that operates the Minnesota Twins baseball team. The Twins team was an Appellant in the Minnesota Supreme Court and a Petitioner in the Ramsey County District Court and Minnesota Court of Appeals proceedings.

(c) Respondent Milwaukee Brewers Baseball Club ("Milwaukee Brewers" or "Brewers") is a Wisconsin limited partnership that operates the Milwaukee Brewers baseball team. The Milwaukee Brewers team was an Appellant in the Minnesota Supreme Court and a Petitioner in the Ramsey County District Court and Minnesota Court of Appeals proceedings.

(d) Respondent American League of Professional Baseball Clubs ("American League") is comprised of fourteen (14) professional baseball teams. The American League was an Appellant in the Minnesota Supreme Court and a Petitioner in the Ramsey County District Court and Minnesota Court of Appeals proceedings.

LIST OF PARTIES – Continued

(e) Respondent National League of Professional Baseball Clubs ("National League") is comprised of sixteen (16) professional baseball teams. The National League was an Appellant in the Minnesota Supreme Court and a Petitioner in the Ramsey County District Court and Minnesota Court of Appeals proceedings.

(f) Respondent Office of the Commissioner of Baseball ("Commissioner") coordinates the activities of the American League and the National League. The Commissioner was an Appellant in the Minnesota Supreme Court and a Petitioner in the Ramsey County District Court and Minnesota Court of Appeals proceedings.

(g) Respondent North Carolina Major League Baseball ("NCMLB") is a limited liability corporation under North Carolina law. NCMLB was an Appellant in the Minnesota Supreme Court and a Petitioner in the Ramsey County District Court and Minnesota Court of Appeals proceedings.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Mike Hatch, Attorney General of the State of Minnesota, respectfully requests that a writ of certiorari issue to review the opinion of the Minnesota Supreme Court in *Minnesota Twins Partnership, et al. v. State by Hatch*, 592 N.W.2d 847 (Minn. 1999) (reprinted at App. 1).

OPINIONS AND JUDGMENTS BELOW

The opinion of the Minnesota Supreme Court is reported at *Minnesota Twins Partnership, et al. v. State by Hatch*, 592 N.W.2d 847 (Minn. 1999), and is reprinted at App. 1. The Minnesota Supreme Court's Entry of Judgment dated June 7, 1999 is reprinted at App. 45. The April 20, 1998 memorandum opinion of the Ramsey County District Court is published in 1998-1 Trade Cases (CCH) ¶ 72,136 and is reprinted at App. 22. The unpublished June 3, 1998 Order of the Minnesota Court of Appeals is reprinted at App. 43. The unpublished May 11, 1998 order of the Ramsey County District Court is reprinted at App. 39.

JURISDICTION

This Petition for Writ of Certiorari seeks review of the opinion and judgment of the Minnesota Supreme Court, *Minnesota Twins Partnership, et al. v. State by Hatch*, 592 N.W.2d 847 (Minn. 1999), App. 1. Judgment was entered on June 7, 1999. App. 45. Jurisdiction is conferred

by 28 U.S.C. § 1257(a). *See also Michigan v. Long*, 463 U.S. 1032 (1983).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Art. I, § 8

> Congress shall have the power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Curt Flood Act of 1998, Pub. L. 105-297, 112 Stat. 2824 (Amending the Clayton Act and *codified* at 15 U.S.C. § 27a (reprinted at App. 47)).

STATEMENT OF THE CASE

The Minnesota Supreme Court, based upon its analysis of this Court's precedents regarding the applicability of antitrust law to Organized Baseball,[1] held that all conduct by Organized Baseball is exempt from the antitrust laws. In so doing, the court precluded any antitrust

[1] "Organized Baseball" and "Baseball" refer to the Respondents contained in the List of Parties. *Supra* at ii-iii. There is no legal entity known as "major league baseball." However, that term commonly refers to the joint operations of the American and National Leagues. *See* Joseph J. McMahon, Jr. and John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 Vill. Sports & Ent. L. F. 213, 230-31 (1996) (discussing 1903 peace agreement ending competition between American and National Leagues).

investigation of Organized Baseball's conduct by the Minnesota Attorney General[2] – no matter how egregious, anti-competitive or peripheral to the game of baseball. Other courts, including the Florida Supreme Court, have held that Baseball's antitrust exemption established by this Court is narrow and have allowed investigation of antitrust claims against Baseball to proceed. The State of Minnesota asks this Court to take review and resolve the conflict of authority and determine whether the judicially created exemption forbids a State from investigating possible price-fixing and collusive boycotts by Organized Baseball.

A. Origins of Baseball's Antitrust Exemption: The Baseball Trilogy

There is no express statutory exemption from the antitrust laws for Organized Baseball.[3] Rather, the exemption is based on the outdated notion that Baseball

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[2] "Attorney General," "State," and "Minnesota" refer to the Petitioner.

[3] The Sports Broadcasting Act, 15 U.S.C. §§ 1291-1295, is a separate and limited antitrust exemption which allows sports leagues, including Baseball, to pool their sponsored television broadcast rights for sale in a package to broadcast networks. This Act was enacted in 1961. In 1966, it was amended to permit the merger of the National and American football leagues. Additionally, all sports leagues enjoy the benefits of the "non-statutory labor exemption" which reconciles the goals of the antitrust laws with laws encouraging collective bargaining. *See Brown v. Pro Football Inc.*, 518 U.S. 231 (1996). Neither the Sports Broadcasting Act nor the non-statutory labor exemption is at issue in this petition.

is not engaged in interstate commerce and therefore not subject to Congressional regulation.

In the first case of this Court's baseball trilogy, Justice Oliver Wendell Holmes stated that "exhibitions of base ball [sic] are purely state affairs" and therefore not subject to congressional regulation under the Commerce Clause. *Federal Baseball v. National League*, 259 U.S. 200, 208 (1922). Logically, this rationale should have applied equally to other forms of entertainment, but this Court refused to extend the rationale to vaudeville performances,[4] boxing,[5] football[6] or basketball.[7] In the second decision of the baseball trilogy, *Toolson v. New York Yankees*, 346 U.S. 356 (1952), this Court, in a *per curiam* decision, simply upheld the exemption created in *Federal Baseball* on the basis of *stare decisis* "without re-examination of the underlying issues." *Id.* at 357. In the third case of the trilogy, *Flood v. Kuhn*, 407 U.S. 258 (1972), this Court specifically rejected the rationale of *Federal Baseball* – that baseball is purely local – finding that "[p]rofessional baseball is a business and it is engaged in interstate commerce." *Id.* at 282. Nonetheless, the majority in *Flood* upheld the dismissal of Flood's claim based on Baseball's exemption from antitrust laws. The sole rationale offered by the Court in *Flood* was that, even though Baseball's antitrust exemption is an aberration, "it is an established one" entitled to the benefit of *stare decisis*. *Id.* at 282. The

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[4] *See Hart v. Keith Vaudeville Exchange*, 262 U.S. 271 (1923).

[5] *See U.S. v. International Boxing Club*, 348 U.S. 236 (1955).

[6] *See Radovich v. National Football League*, 352 U.S. 445 (1957).

[7] *See Haywood v. National Basketball Ass'n*, 401 U.S. 1204 (1971).

only issue before the Court in *Flood* was whether Baseball's "reserve system"[8] was exempt from antitrust laws. Similarly, the reserve system was the main issue before the Court in *Federal Baseball*[9] and *Toolson*.[10]

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[8] The reserve system, as applied through a reserve clause contained in every ballplayer's contract, provided that the initial team with which a ballplayer signed a contract had a continuing and exclusive right to his services. The club could unilaterally renew the player's contract when it expired, or release the player, or assign the player's contract to any other team, which would then have the same rights to the player's services. App. 11.

[9] For example, the Court of Appeals in *Federal Baseball* noted that the "gravamen" of the plaintiff's complaint was the reserve system which gave Organized Baseball "control over practically all available players of sufficient skill to serve in a major league club." *National League v. Federal Baseball*, 269 F. 681, 688, 683 (D.C. Cir. 1921), *aff'd*, 259 U.S. 200 (1922). A consequence of the reserve system was to prevent entry by competitors into the market for exhibiting baseball games and to eliminate existing competitors. *See Id.* at 683; *see also* McMahon and Rossi, *supra* note 1, at 223-24. Although the Federal Baseball club was concerned about the leagues' monopoly power, its Supreme Court brief reveals that the reserve system was the primary tool used by the leagues to maintain monopoly power. *See* Federal Baseball's Opening Brief at 31, 259 U.S. 200 (1922) (attached to Peter Carter's Affidavit accompanying the Twins' March 18, 1998 District Court memorandum). Moreover, the trial court found that the Leagues "attempted to monopolize, and did monopolize, a part of that [interstate] commerce principally through what is known as the 'reserve clause' and ineligible list features of certain agreements." 269 F. at 684. The Court of Appeals did not consider this finding of the trial court because it was determined that interstate commerce was not involved. *Id.* at 688.

[10] *Toolson* was consolidated with two other cases including a case brought by Jack Corbet, an owner of a minor league team.

As described more fully below, *infra* at 15-17, courts adopted at least three conflicting interpretations of the scope of the antitrust exemption after the *Flood* decision. Some courts found that the exemption is narrowly limited to the facts of the *Flood* decision – *i.e.*, only the reserve system is exempt from the antitrust laws. Other courts found that *Flood* continued a broad, blanket exemption. Yet other courts adopted a middle position, finding that

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See Corbet v. Chandler, 346 U.S. 356 (1953); *Kowalski v. Chandler*, 346 U.S. 356 (1953). Each of the three plaintiffs in the cases consolidated in *Toolson* complained of the reserve system, which was accomplished though a "reserve clause" in each of the players' contracts. *See supra* note 8. Even Corbet, the owner of the minor league team, according to the *Toolson* dissent, was challenging the reserve clause. *Toolson*, 346 U.S. 356, 364 (Burton and Reed, JJ., dissenting) (noting that the plaintiffs alleged that "because of illegal and inequitable agreements of interstate scope between organized baseball and the Mexican League binding each to respect the other's 'reserve clauses' they have lost the services of and contract rights to certain baseball players. The plaintiffs also allege that the defendants have entered into a combination, conspiracy and monopoly or an attempt to monopolize professional baseball. . . . "). While Corbet may have complained about issues other than the reserve clause, an examination of the amended complaint in *Corbet v. Chandler*, No. 2599 (S.D. Ohio filed Sept. 24, 1951) (attached to Peter Carter's Affidavit accompanying the Twins' March 18, 1998 District Court memorandum) reveals no less than 30 references to the "reserve clause" or the "right of reservation." Moreover, the amended complaint states that the "right of reservation has created a monopoly exercised by the Major League Owners." *Id.* at ¶ LXXI. In other words, many of Corbet's complaints stemmed from the ability of the owners to "reserve" players and deprive his team of any talent. Thus Corbet, like the Federal Baseball club, primarily challenged the reserve system.

Flood narrowed the exemption to the "unique needs and characteristics" of Baseball.

B. The Present Dispute

This case arises out of an investigation by the Minnesota Attorney General regarding a possible conspiracy among Baseball and its owners to boycott communities that do not provide public financing for baseball stadia. The investigation resulted from a number of public announcements and other events which suggested that such a conspiracy existed with respect to the threatened relocation of the Minnesota Twins.

In early October 1997, Carl Pohlad, on behalf of the Minnesota Twins Partnership, announced that he had signed a letter of intent to sell the Twins to Donald Beaver and the other investors of North Carolina Major League Baseball, L.L.C. ("NCMLB"). App. 3. The terms of the letter provided that the sale would be completed only if the Minnesota Legislature failed to pass legislation providing for a publicly-financed ballpark for the Twins. App. 3.

Within days of Pohlad's announcement, then-Acting Commissioner of Baseball Allan "Bud" Selig told Minnesota's governor and a group of legislators that, if a publicly-funded stadium were not built, the other Major League Baseball team owners would approve the Twins sale to Mr. Beaver's group. App. 3. As reported by the St. Paul *Pioneer Press*, Minnesota lawmakers were concerned that this letter of intent was a sham designed to put

pressure on the Legislature and was not intended to be a serious agreement.

> Some lawmakers have questioned whether the loosely written letter of intent, which both men signed and did not require Beaver to put any money down on the team, was legally binding. Some anti-stadium legislators said the letter was a sham, cooked up by the Pohlads to pressure lawmakers to approve a stadium.[11]

Robert Pohlad, son of Twins owner Carl Pohlad, acknowledged that the deal with Beaver was an attempt to pressure the Legislature. "People have said the whole thing is orchestrated to put pressure on the legislature. . . . Well, it is orchestrated to put pressure on legislators. Of course it is."[12]

Other publicly available facts supporting a taxpayer-exploitation conspiracy include that Beaver is a part-owner of the Pittsburgh Pirates baseball team and that team was attempting to obtain a publicly-subsidized stadium during the same time period.[13] Also, two years earlier, Selig threatened to sell his Milwaukee Brewers to

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[11] Patrick Sweeney, *Baseball Owners Name Group to Guide Team Through Sale, Relocation Rules*, St. Paul Pioneer Press (Nov. 19, 1997) (copy attached to the Affidavit of Mr. Journey Gosselin ("Gosselin Aff.") at 18 accompanying the State's Feb. 8, 1998 district court memorandum).

[12] Bob Sansevere, *Miserly Pohlad Has Spun His Web; Trap is set for Minnesotans*, St. Paul Pioneer Press (Oct. 5, 1997) (Gosselin Aff. at 21).

[13] Rich Lord, *Beaver Bags Twins Deal, May Depart as Pirates Owner*, Pittsburgh Tribune-Review, (Dec. 4, 1997) (Gosselin Aff. at 33).

Beaver if Wisconsin communities did not build a publicly-subsidized stadium.[14] Additionally, at least two owners of Major League Baseball teams have acknowledged that a relocation of the Twins would help them obtain publicly-subsidized stadia. An anonymous owner stated: "We want to get new stadiums in San Diego, Montreal, and Pittsburgh in addition to Minnesota. If the Twins move, it will give notice to the other cities that they better build the stadiums."[15] Thus, by putting pressure on Minnesota, Beaver increased his chances of getting a new stadium for the Pirates whether the Twins moved or stayed and received a new stadium. In addition, according to the Minneapolis *Star-Tribune*, when Philadelphia Phillies owner Bill Giles was asked if a Twins move could help him persuade the Pennsylvania Legislature to give his team a new stadium, Giles smiled and said, "Yes, you got it."[16] Finally, according to the St. Paul *Pioneer Press*, then-Acting Commissioner Selig said that a new revenue sharing agreement is the reason that some Baseball team owners are "insistent that the Twins and other small- and

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[14] Doug Grow, *Some Too Obvious Stadium Questions*, Minneapolis Star Tribune, (Oct. 8, 1997) (Gosselin Aff. at 24).

[15] Sid Hartman, *Pohlad Sounds Like He's Ready For A Move*, Minneapolis Star-Tribune (Mar. 20, 1998) (copy attached to Affidavit of Peter Hofrenning accompanying the State's May 7, 1998 district court memorandum).

[16] Jay Weiner, *Baseball Owners Give Pohlad Permission to Shop Around*, Minneapolis Star-Tribune (June 13, 1997) (Gosselin Aff. at 14).

medium-market teams that don't already have lucrative stadiums . . . get them."[17]

This evidence of a conspiracy to coerce economic concessions from communities suggests that Organized Baseball's overall strategy is to limit the number of teams so that at least one economically viable market for a Baseball team remains vacant, allowing owners to threaten to move to that market if they do not get what they want from their home towns.[18] For example, in a ten-year period, seven teams threatened to move to Florida's Tampa-St. Petersburg area.[19] Several of these teams, including the Cleveland Indians and Chicago White Sox,

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[17] Patrick Sweeney, *Baseball Team Owners Back Move-or-Sell Bid for Twins*, St. Paul Pioneer Press (June 13, 1997) (Gosselin Aff. at 3).

[18] *See, e.g.*, Stephen F. Ross, *Monopoly Sports Leagues*, 73 Minn. L. Rev. 643, 656 (1989) ("Monopoly sports leagues have significant economic incentives to keep the number of franchises below the number that would exist in a free market. The fewer the franchises, the more incentive for have-not cities to provide generous tax subsidies to induce an existing team to relocate."); James Quirk and Rodney Fort, *Hard Ball: The Abuse of Power in Pro Team Sports* at 129-30 (Princeton Univ. Press 1999) ("To put teeth into team threats, leagues routinely leave a number of desirable locations without league teams. In Baseball, Tampa, St. Petersburg, and Jacksonville filled this bill for years, popping up from season to season as potential move sites for teams such as the Indians, the White Sox, the Mariners, and the Giants, as those teams angled for publicly funded stadiums").

[19] Jay Weiner, *Twins Don't Have Many Relocation Options*, Minneapolis Star-Tribune (May 12, 1997) (quoting Professor Ross) (Gosselin Aff. at 53); *see also* Stephen F. Ross, *Reconsidering Flood v. Kuhn*, 12 U. Miami Ent. & Sports L. Rev. 169, 170 (1995) (hereinafter *Reconsidering Flood v. Kuhn*).

then received new publicly subsidized stadia.[20] The Tampa-St. Petersburg area received an expansion team only after the Florida Attorney General obtained the right to review internal Baseball documents in *Butterworth v. National League of Prof'l Baseball Clubs*, 644 So. 2d 1021 (Fla. 1994).[21] With Beaver's recurring role in the Brewers' and Twins' bids for new stadia, North Carolina now appears to be playing the shill role formerly played by Tampa.

Based on this publicly available evidence,[22] the State believes that there is a reasonable basis to conclude that Organized Baseball, and its owners, may be engaged in a conspiracy to boycott, or threaten to boycott, communities that do not provide publicly-financed stadia.[23] For these reasons, the Minnesota Attorney General issued

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[20] *Id.; see also* Quirk and Fort, supra note 18, at 218-25 (listing of new stadia and public's contribution).

[21] John Jibeaut, *Skybox Shakedown*, A.B.A.J. 68, 69 (June 1998).

[22] The Attorney General does not allege that the newspaper articles constitute "hard evidence" that Baseball violated the law. Rather, these accounts provided a "reasonable basis" under Minn. Stat. § 8.31 for the Attorney General to issue civil investigative demands and commence an investigation to determine whether the antitrust laws have been violated.

[23] In *F.T.C. v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 434 (1990), this Court found that the trial lawyers' agreement to boycott the government of the District of Columbia unless their fees were increased was *per se* illegal. Similarly, it is possible that the independent owners of Baseball may be conspiring together to threaten to boycott communities that do not increase public subsidies for ballparks. If an investigation is permitted, evidence may support other theories of liability or non-liability.

antitrust civil investigative demands ("CIDs")[24] to Organized Baseball on December 17, 1997. App. 3. The Attorney General did not file a public complaint accusing Baseball of violating the law. Rather, confidential CIDs were served to gather evidence to determine if the antitrust laws had, in fact, been violated.

C. How the Federal Question Arose

Organized Baseball challenged the validity of the CIDs in Ramsey County District Court claiming to have a blanket exemption from the antitrust laws based on this Court's decision in *Flood*. App. 9. In an April 20, 1998 order, Judge Margaret M. Marrinan adopted the reasoning of courts that viewed the exemption as applying only to the reserve system,[25] holding that "the ruling in *Flood* confines [baseball's] antitrust exemption to the narrow area of the reserve clause." App. 19, 34. Because the State's investigation did not involve the reserve system, the district court upheld the validity of the State's CIDs and ordered Organized Baseball to comply with them. App. 19, 21. The district court also found that the State's allegations "are extremely serious. If true, they might indeed run afoul of antitrust legislation, whether state or

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[24] A CID is a pre-complaint investigative tool that state and federal agencies use to gather facts to determine if an antitrust lawsuit should be filed. *See Minnesota Twins*, 592 N.W.2d at 850-51, App. 3-9.

[25] Judge Marrinan relied on *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Penn. 1993) in her analysis of *Flood*'s narrow exemption. (App. 32).

federal." App. 36.[26] The Minnesota Court of Appeals denied Baseball's petition for discretionary review stating that review of the issues was premature. App. 43-44. The Minnesota Supreme Court, however, reviewed the district court order, adopted the broad, blanket interpretation of Baseball's antitrust exemption, and reversed the district court saying:

> As intellectually attractive as the *Piazza* [a federal district court decision interpreting *Flood* narrowly] alternative is, we are compelled to accept the paradox the Supreme Court acknowledged in *Flood* when it declined to overrule *Federal Baseball*. To borrow a phrase from the concurrence in *Flood*, this court is "not the forum in which this tangled web ought to be unsnarled." Professional baseball's exemption from antitrust laws may be an aberration, but we agree with those courts that believe "the Supreme Court should retain the exclusive privilege of overruling its own decisions." We choose to follow the lead of those courts that

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[26] On May 11, 1998, the district court limited the scope of the CIDs in response to Baseball's complaint of burdensomeness. App. 39. Baseball specifically did not appeal this order and the issue of burdensomeness was not before the Minnesota Supreme Court and is not before this Court. Organized Baseball also challenged the State's CIDs as violating the Commerce Clause of the U.S. Constitution. The district court viewed the commerce clause issue as premature in the absence of a factual record. App. 38. However, the Minnesota Supreme Court did not address this issue because its holding "was dispositive of this action." 592 N.W. 2d at 856 n. 19, App. 20. Consequently, the Commerce Clause issue is not before this Court.

> conclude the business of professional baseball is exempt from federal antitrust laws.

App. 20 (citations omitted). The state court went on to "hold that the conduct of the Twins being investigated by the Attorney General is exempt from Minnesota, *as well as federal,* antitrust laws." App. 21 (emphasis added). Judgment was entered on June 7, 1999. App. 45. The State now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve the conflict between the Supreme Courts of Minnesota and Florida on the important issue of the breadth of the antitrust exemption for Baseball. The issue of the merits of whether Baseball is actually violating the antitrust laws is not before the Court; rather, the Court merely needs to determine whether Baseball is exempt from the antitrust laws under the alleged facts of this case.

The purpose of the antitrust laws is to preserve and advance our system of free, competitive enterprise and to encourage, to the fullest extent practicable, free and open competition in the market place. On the playing field, Organized Baseball exemplifies this spirit of competition. However, in contrast to this spirit of fair competition on the playing field, off the playing field the owners of Major League Baseball teams engage in a variety of monopolistic and anti-competitive practices. Unlike 80 years ago when the Court created an antitrust exemption for Baseball, the business of baseball has become a large industry which can affect the vitality of the economies of

cities and states. An antitrust exemption allows Baseball to create and maintain an artificial shortage of teams resulting in bidding wars between cities and states for the available teams that cost taxpayers hundreds of millions, if not billions, of dollars. Furthermore, if construed as broadly as the Minnesota Supreme Court has done, the exemption allows Baseball to engage in any manner of anticompetitve conduct without check or restraint. This Court should grant review to resolve the conflict of authority on this important issue regarding Baseball's exemption from the antitrust laws.

I. THE MINNESOTA SUPREME COURT'S INTERPRETATION OF THE BASEBALL EXEMPTION IN *FLOOD* CONFLICTS WITH THE FLORIDA SUPREME COURT'S INTERPRETATION AND AGGRAVATES AN EXISTING SPLIT OF AUTHORITY IN THE FEDERAL COURTS.

The Minnesota Supreme Court's opinion directly conflicts with the Florida Supreme Court's opinion in *Butterworth v. National League of Prof'l Baseball Clubs*, 644 So. 2d 1021 (Fla. 1994). In *Butterworth*, the court found that, based upon its review of the *Flood* decision, "baseball's antitrust exemption extends only to the reserve system." *Id.* at 1025. As in this case, the Florida Attorney General in *Butterworth* was investigating whether league decisions concerning the sale and relocation of a franchise were part of an anticompetitive conspiracy. The legality of that investigation was upheld because the Florida Supreme Court found that the exemption in *Flood* was narrow and did not exempt such conduct. *Id.* The Minnesota Supreme Court, in contrast, found that *Flood*

continued a broad exemption for the "business of baseball" and barred the Attorney General's attempt to investigate through use of CIDs. App. 20-21.

The Minnesota Supreme Court's decision also aggravates an existing split in authority among the other courts which have considered the issue. After *Flood*, three versions of the scope of the antitrust exemption emerged in the state supreme and lower federal courts that have considered the issue. In fact, the *Butterworth* decision followed a federal district court's decision in *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Penn. 1993). *Piazza* involved the same relocation issues as *Butterworth* and held that *Flood* limited the exemption to the reserve system, denied Baseball's motion to dismiss and allowed plaintiffs to proceed with discovery against Baseball. Other courts have held that *Flood* continued a broad, blanket exemption. *See, e.g., Finley v. Kuhn*, 569 F.2d 527 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978); *Portland Baseball Club v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974); *McCoy v. Major League Baseball*, 911 F. Supp. 454 (W.D. Wash. 1995). Still other courts have taken a middle position and concluded that *Flood* narrowed the exemption to the "unique characteristics and needs" of Baseball. *See, e.g., Postema v. National League*, 799 F. Supp 1475, 1489 (S.D.N.Y. 1992), *rev'd on other grounds*, 998 F.2d 60 (2d Cir. 1993) (finding that relations with umpires are not a "unique characteristic or need" of Baseball); *Henderson Broadcasting v. Houston Sports Ass'n*, 541 F. Supp. 263, 268-69 (S.D. Tex. 1982) (finding that broadcasting "is not central enough to the unique characteristics and needs of

baseball which the exemption was created to protect").[27] This middle position is also supported by this Court's recent statement that Baseball's exemption is "an aberration resting on a recognition and an acceptance of baseball's *unique characteristics and needs.*" *State Oil v. Khan*, 522 U.S. 3, ___, 118 S. Ct. 275, 284 (1997) (emphasis added).

Clearly, there is a direct conflict between the Supreme Courts of Minnesota and Florida on the scope of Baseball's exemption from the antitrust laws. *See* U.S. Sup. Ct. R. 10(b).[28] Moreover, there are additional inconsistent decisions in lower federal courts.

II. THE ISSUE PRESENTED IS IMPORTANT.

Not only do irreconcilable conflicts exist in lower courts' application of this Court's precedents, but the issue presented is of great importance. Professional sports teams can be an important part of the economic well-being of our communities.[29] A broad exemption

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[27] For a more detailed analysis of the exemption's history, see Joseph J. McMahon and John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 Vill. Sports & Ent. L.F. 213 (1996).

[28] Additionally, the Minnesota Supreme Court's broad, blanket view of the exemption is also in conflict with this Court's decision in *Flood*. *See* U.S. Sup. Ct. R. 10(c).

[29] The benefits to cities from having a Baseball team located in a community could include enhanced reputation and prestige, additional employment, increased sales and use taxes, additional recreational opportunities, and enhanced civic morale and youth interest in sport.

allows Baseball, with impunity, to collude among its owners to threaten boycotts of a particular city and extort hundreds of millions of dollars from the communities in the form of subsidies for construction of new stadia.[30] Although Baseball claims to benevolently use its exemption as a shield to protect communities from midnight franchise relocations, it is equally true that Baseball uses the exemption as a sword to extort public stadium subsidies by threatening to move unless its demands for new stadia are met.[31] Every dollar spent subsidizing a Baseball stadium is a dollar not spent on essential government services including education, pre-natal nutrition programs, roads, public health programs, fire protection and public safety.

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[30] *See, e.g., Reconsidering Flood v. Kuhn, supra* note 19, at 196 ("Allowed to freely collude and monopolize, baseball owners have cost taxpayers millions of dollars in stadium subsidies [and] deprived millions of fans in "have-not" cities of major league franchises.").

[31] Baseball argued below that the antitrust exemption is used to preserve franchise stability and that subjecting Baseball to the antitrust laws would destroy franchise stability "by subjecting it to the ebb and flow of the free market system." Baseball's Oct. 20, 1998 Reply Brief at 12 n. 2, 592 N.W.2d 847 (Minn. 1999). It is ironic that Baseball made this argument when one of the underlying issues in this case is Pohlad's threats to sell his team to a North Carolina investment group. For discussion of teams that have threatened to leave communities unless stadia were built see John Jibeaut, *Skybox Shakedown*, A.B.A.J. 68, 71 (June 1998) and James Quirk and Rodney Fort, *Hard Ball: The Abuse of Power in Pro Team Sports* at 129-30 (Princeton Univ. Press 1999). *See also supra* notes 18-21 and accompanying text.

Because of the exemption, Baseball, unlike other sports leagues and industries, is completely unaccountable under the antitrust laws for its behavior. When the Court created the exemption 80 years ago, a reasonable justification for it may have existed. However, there are no longer any sound legal or policy reasons for the exemption, and certainly an unlimited or blanket exemption finds no support in the law or notions of good public policy.

In holding that Baseball's reserve system was exempt from antitrust scrutiny in *Flood*, this Court expressly invoked *stare decisis* as its rationale. However, this Court has recently recognized that "*stare decisis* is not an inexorable command." *Khan*, 522 U.S. at ___, 118 S. Ct. at 284. *Khan* overruled a long-standing *per se* rule against vertical maximum price fixing created by this Court because there were no longer any sound economic reasons supporting such a *per se* ban. As the Court in *Khan* stated:

> [I]n the area of antitrust law, there is a competing interest, well represented in this Court's decisions, in recognizing and adapting to changed circumstances and the lessons of accumulated experience. Thus, the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act in light of the accepted view that Congress "expected the courts to give shape to the statute's broad mandate by drawing on common-law tradition." As we have explained, the term "restraint of trade," as used in § 1, also invokes the common law itself and not merely the static content that the common law had assigned to the term in 1890. *Accordingly, this Court has reconsidered its decisions construing the*

> *Sherman Act when the theoretical underpinnings of those decisions are called into serious question.*

Khan, 522 U.S. at ___, 118 S. Ct. at 284-85 (emphasis added). As the *Flood* decision unequivocally shows, the underpinnings of this Court's *Federal Baseball* decision have not only been called into serious question, but have been rejected by the Court itself.

Moreover, since the exemption was first established, the governance structure of Major League Baseball has changed to greatly increase the likelihood of self-dealing and collective restraints of trade by team owners, and has essentially eliminated the role of a strong and independent Commissioner. Before 1994, the Commissioner had broad powers to act in the "best interest" of Baseball and to regulate the leagues. In 1994, however, Baseball eliminated the requirement that the Commissioner be independent and weakened his powers. *See* Craig Arcella, *Major League Baseball's Disempowered Commissioner: Judicial Ramifications of the 1994 Restructuring*, 97 Colum. L. Rev. 2420, 2467 (1997). The restructuring

> prevents the Commissioner from invoking the best interests [of baseball] power over issues that concern virtually all of the important business aspects of Major League Baseball, including matters of League expansion, franchise sale or relocation, scheduling, interleague play, divisional alignment, revenue sharing, and labor relations.

Id. at 2439. Thus, Major League Baseball has become a mere collection of self-interested owners, with no internal restraints to protect against over-reaching. According to Arcella, a primary benefit for owners from the exemption

is that Major League Baseball "can blackmail the cities into bankrolling new stadiums. . . . [T]his can be worth tens of millions of dollars in additional revenue." *Id.* at 2446. With a blanket exemption and the demise of an independent commissioner, there is no internal or external restraint on collusive conduct by Baseball that harms the public interest. *See id.* at 2467.

Baseball's alleged need for the exemption is unpersuasive. In *Flood,* Baseball claimed that it could not survive without the reserve clause. Ironically, the fundamental nature of the reserve clause was eliminated through collective bargaining in the mid-1970s and any immunity for the reserve system was eliminated through passage of the Curt Flood Act of 1998.[32],[33] An exemption could hardly be justified on a claim by Baseball that its owners must be able to fix the prices of stadia and to collectively extort public subsidies from communities in which they operate.[34] Indeed, all other professional

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[32] Curt Flood Act of 1998, Pub. L. No. 105-297, 112 Stat. 2824. The Curt Flood Act added a new section 27 to the Clayton Act and is codified at 15 U.S.C. § 27a (App. 47).

[33] *See* Marianne McGettigan, *The Curt Flood Act of 1998: The Players Perspective,* 9 Marq. Sports L.J. 379, 382 (1999) (discussing demise of reserve system due to collective bargaining and the Curt Flood Act).

[34] No court or legislative body has determined that it is necessary for Baseball's owners to conspire to limit the number of franchises in order to maximize governmental subsidies for stadia. This Court in *Flood,* relying on the 1952 Report of the Subcommittee on the Study of Monopoly Power of the House Committee of the Judiciary, H.R. Rep. No. 2002, 82d Cong., 2d Sess. (hereinafter "1952 House Report") (relevant portions attached to Minnesota's Oct. 7, 1998 Brief in *Minnesota Twins,*

sports leagues (including football, hockey and basketball) operate successfully, and even thrive, without such an exemption.[35]

Because there are no longer any principled reasons to preserve the exemption, or at least a blanket exemption, and because, as described below, Congress has squarely placed the issue with the courts, this Court should grant *certiorari* and review this important issue.

III. LEGISLATIVE HISTORY OF THE CURT FLOOD ACT OF 1998 CLEARLY INDICATES THAT CONGRESS EXPECTS THE COURTS TO DECIDE THE SCOPE OF THE JUDICIALLY-CREATED EXEMPTION.

When Congress recently passed the Curt Flood Act of 1998, it clearly indicated that it expected the courts to determine the scope of the Baseball antitrust exemption on issues outside labor relations. Thus, Baseball cannot argue, as it has in the past, that the elimination, or the

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592 N.W.2d 847 (Minn. 1999)), found that Congress approved of "some sort of reserve system." 407 U.S. at 271. However, the same 1952 House Report expressly rejects a "blanket immunity" for Baseball, in part because of concerns about "restrictions on transfer of baseball franchises." 1952 House Report at 230.

[35] No other sports league has such a blanket exemption from the antitrust laws and many of the other major professional sports leagues are thriving. Moreover, under this Court's decision in *N.C.A.A. v. Board of Regents of the Univ. of Oklahoma*, 468 U.S. 85 (1984), most activities of sports leagues are governed by the rule of reason standard and cooperation on matters necessary for a league's existence is permitted.

limitation, of the exemption should be left to Congress.[36] As the creator of the Baseball exemption, the Court is in the best position to determine its scope.

In the Curt Flood Act, Congress eliminated Baseball's antitrust exemption for issues relating to its labor relations with major league players. However, the Act did not change the scope of the exemption outside of labor relations with major league players. *See* Section 27(b) of the Clayton Act, 15 U.S.C. § 27a(b) (App. 48). Indeed, the Curt Flood Act's author, Senator Orrin Hatch, stated that, "[w]ith regard to all other contexts or other persons or entities, the law will be the same after passage of the Act as it is today." 144 Cong. Rec. S9621-01 (July 31, 1998) (App. 54). Senator Hatch also stated that the scope of the exemption outside of labor relations "depend[s] upon judicial interpretation of the law." 144 Cong. Rec. S9494-03, *S9497 (July 30, 1998) (App. 73). Senator Patrick Leahy, a co-sponsor of the Act, also noted that after *Flood* "there has been a growing debate as to the continued vitality, if any, of any antitrust exemption for baseball. It

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[36] Although this Court in *Flood* agreed with Baseball that it was up to Congress to remedy the exemption aberration, *see Flood*, 407 U.S. at 285-86, Justice Douglas, who voted with the majority in *Toolson*, dissented in *Flood* calling the exemption "a derelict in the stream of the law that we, its creator, should remove. Only a romantic view of a rather dismal business account over the last 50 years would keep that derelict in midstream." 407 U.S. at 286 (citations omitted). Moreover, this Court in *Khan* stated that in the antitrust area, "the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act" in light of the courts' duty to construe the Sherman Act by drawing on the dynamic common-law tradition. 522 U.S. at ___, 118 S. Ct. at 284.

is for precisely this reason that this bill is limited in its scope to employment relations." *Id.* (App. 76).

Finally, in a colloquy with Senators Hatch and Leahy, Senator Paul Wellstone noted

> that several lower courts have recently found that baseball currently enjoys only a narrow exemption from antitrust laws and that this exemption applies only to the reserve system. For example, the Florida Supreme Court in *Butterworth v. National League*, 644 So. 2d 1021 (Fla. 1994), the U.S. District Court in Pennsylvania in *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Penn. 1993) and a Minnesota state court involving the Twins have all held the baseball exemption from antitrust law is now limited to the reserve system. It is my understanding that [the Curt Flood Act] will have no effect on the courts' ultimate resolution of the scope of the antitrust exemption on matters beyond those related to owner-player relations at the major league level.

144 Cong. Rec. S9621-01 (July 31, 1998) (App. 53-54). Senators Hatch and Leahy agreed with Senator Wellstone. *See id.* (App. 54). The Senate colloquy of the Act's authors was submitted by Representative Bill Luther immediately prior to passage of the bill by a voice vote in the House of Representatives "in order to clarify the legislative intent of [the Curt Flood Act]." 144 Cong. Rec. H9942-03, *H9945 (Oct. 7, 1998). President Clinton signed the bill on October 27, 1998 and confirmed in his official statement upon signing the bill that the "[Curt Flood] Act in no way codifies or extends the baseball exemption." 34 *Weekly Compilation of Presidential Documents* 2150 (Nov. 2, 1998)

reprinted in 1998 U.S.C.C.A.N. 637. Thus, Congress has clearly stated its belief that the issue of the scope of the exemption outside labor relations is a matter for judicial action. As Congress indicates, since the Court established the exemption, it is appropriate for the Court to determine its scope.

IV. THIS COURT HAS JURISDICTION TO GRANT THE PETITION.

This Court clearly has jurisdiction to grant the Petition for Certiorari because the Minnesota Supreme Court's decision involved a mixed question of state and federal law. Under *Michigan v. Long*, 463 U.S. 1032 (1983), the Court has jurisdiction when a state court decision considers a mixed question of state and federal law.

> [When] a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did *because it believed that federal law required it to do so.*

463 U.S. at 1040-41 (emphasis added).[37] *Long* created a presumption of Supreme Court jurisdiction when a state

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[37] *Long* was affirmed by two subsequent decisions. *See Arizona v. Evans*, 514 U.S. 1 (1995); *Ohio v. Robinette*, 519 U.S. 33 (1996). *See also Delaware v. Prouse*, 440 U.S. 648, 652 (1979) (finding Supreme Court jurisdiction when state constitution is "automatically interpreted at least as broad as" federal constitution).

court considers a question involving a mixture of federal and state precedents, unless there is "a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves *compel* the result the court has reached." 463 U.S. at 1041 (emphasis added).

Here, the Minnesota Supreme Court explicitly declared that is was "compelled" by federal law to reach the conclusion it did. As the court stated:

> [W]e are *compelled* to accept the paradox the Supreme Court acknowledged in *Flood* when it declined to overrule *Federal Baseball*. To borrow a phrase from the concurrence in *Flood*, this court is "not the forum in which this tangled web ought to be unsnarled." Professional baseball's exemption from antitrust laws may be an aberration, but *we agree with those courts that believe "the Supreme Court should retain the exclusive privilege of overruling its own decisions."*

App. 20 (emphasis added) (citation omitted).[38] The Minnesota court went on to "hold that the conduct of the Twins being investigated is exempt from Minnesota, *as well as federal*, antitrust laws." App. 21 (emphasis added).

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[38] In prior opinions, the Minnesota Supreme Court has had occasion to provide a plain statement of the independent state grounds for its decisions. *See, e.g., Friedman v. Commissioner of Public Safety*, 473 N.W.2d 828, 837 (Minn. 1991) ("We decide this case solely on the basis of Art. I, § 6 of our Minnesota Constitution, and not on any provision of either federal law or the United States Constitution."); *State v. Russell*, 477 N.W.2d 866 (Minn. 1991) (finding that different criminal penalties for possession of crack and powder cocaine violated state, but not federal, equal protection guarantees).

Based on the clear reliance of the Minnesota court's decision on federal law, this Court properly has jurisdiction to hear an appeal.[39]

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Petition for a Writ of Certiorari be granted.

Dated: September 3, 1999

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[39] Although it is clear that the Minnesota Supreme Court based its decision on federal law, it is important to note that even if the court's decision raised a possible ambiguity as to whether it was based on state or federal law, this Court would still have jurisdiction because

> [u]nder *Long* the *existence of ambiguity regarding the federal or state law basis of a state court decision will trigger [the Supreme] Court's jurisdiction. Long* governs even when, all things considered, the more plausible reading of the state court's decision may be that the state court did not regard the federal constitution alone as a sufficient basis for its ruling.

Robinette, 519 U.S. at 44, (emphasis added) (Ginsburg, J. concurring).

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STATE OF MINNESOTA
IN SUPREME COURT
C9-98-890

Court of Appeals — Anderson, Paul H., J.
Took No Part, Lancaster, J.

Minnesota Twins Partnership, petitioner,

Appellant,

Milwaukee Brewers Baseball Club,
Limited Partnership, et al., petitioners,

Appellants,

vs.

State of Minnesota, by Michael A. Hatch,
its Attorney General,

Respondent.

Filed: April 29, 1999
Office of Appellate Courts

SYLLABUS

The business of professional baseball is exempt from federal and state antitrust laws; therefore, Minnesota's Attorney General may not enforce compliance with civil investigative demands served on appellants pursuant to an investigation of potential violations of Minnesota's antitrust laws based on a proposed sale and relocation of the Minnesota Twins baseball team.

Reversed and remanded.

Heard, considered, and decided by the court en banc.

OPINION

ANDERSON, Paul H., Justice.

We are asked to determine if appellants must comply with civil investigative demands issued by the Minnesota Attorney General's Office. The Attorney General is requesting information on the proposed sale and relocation of the Minnesota Twins baseball franchise to North Carolina and a potential boycott of Minnesota by Major League Baseball[1] in violation of state antitrust laws. The appellants allege that their conduct is exempt from Minnesota's antitrust laws because the United States Supreme Court has held that the business of professional baseball is exempt from compliance with federal antitrust laws. The district court rejected this argument and issued an order compelling compliance with the civil investigative demands. The Minnesota Court of Appeals denied review, holding that the issues presented were "premature." Appellants now ask us to reverse the court of appeals' denial of review and remand the matter to that court to consider the issues on the merits. We instead reverse the district court's order to compel compliance with the civil investigative demands and remand.

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[1] Although there is no legal entity known as Major League Baseball, this term is commonly used to refer to the joint operations of the American League of Professional Baseballs [sic] Clubs, Inc. and National League of Professional Baseball Clubs, Inc. *See* Joseph J. McMahon, Jr. and John P. Rossi, *History and Analysis of Baseball's Antitrust Exemption*, 2 Vill. Sports & Ent. L. F. 213, 230-31 (1996) (discussing 1903 agreement between American and National Leagues).

The facts are not in dispute. Early in October 1997, Carl R. Pohlad, on behalf of the Minnesota Twins Partnership, announced that he had signed a letter of intent to sell the Twins to North Carolina businessman Donald C. Beaver and the other investors of North Carolina Major League Baseball, L.L.C. (NCMLB). The sale was contingent on the Minnesota Legislature's refusal to authorize public funding for a new baseball stadium by November 30, 1997. Within days of the announcement of the proposed sale, a delegation from Minnesota, including then-Governor Arne H. Carlson and key legislators, traveled to Milwaukee to confer with then-Acting Commissioner of Major League Baseball Allan "Bud" Selig. Selig told the delegation that if a publicly-funded stadium was not authorized and built, the other Major League Baseball (MLB) team owners would approve the Twins' move from Minnesota. The Minnesota Legislature subsequently rejected all stadium bills introduced in the special legislative session called by Governor Carlson.

On December 17, 1997, the Attorney General served the Twins with civil investigative demands[2] (CIDs) as part of an investigation into possible violations of state antitrust laws. The other appellants, Milwaukee Brewers Baseball Club, L.P. (Brewers), the American League of Professional Baseball Clubs, Inc. (American League), the National

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[2] The Attorney General's Office has the authority to demand discovery from persons suspected of violating state laws governing trade and commerce. Minn. Stat. § 8.31, subd. 2 (1998). This discovery is demanded through documents called civil investigative demands which issue directly from the Attorney General's Office. *See Kohn v. State by Humphrey*, 336 N.W.2d 292, 295 (Minn. 1983).

League of Professional Baseball Clubs, Inc. (National League), the Office of the Commissioner of Major League Baseball, and NCMLB, were also served with the CIDs on that date.[3] The CIDs served on the Twins requested a broad array of documents concerning, among other things, the financial viability of the Hubert H. Humphrey Metrodome (the Twins' current stadium), the methods used by other professional baseball teams to obtain new stadia, the potential purchase of the Twins by Beaver and his group of North Carolina investors, and the 1961 relocation of the Washington Senators to Minnesota. The CIDs also included numerous interrogatories seeking information on the Twins' efforts to procure a new stadium, as well as information on the structure, governance, and revenues of MLB.

The CIDs served on appellant NCMLB requested information on attempts to obtain a MLB expansion franchise or to purchase and relocate the Twins. The CIDs served on appellants Brewers, American League, National League, and the Office of the Commissioner requested, among other things, information on past MLB expansion, team relocation, and stadia financing, as well as information specific to the Twins' potential sale and relocation. Because all appellants have substantially the same interests before us, we will hereinafter refer to all appellant parties as the "Twins."

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[3] On March 11, 1998, appellants Brewers, American League, National League, Office of the Commissioner of Baseball, and NCMLB intervened; the intervenors were joined as appellants on appeal.

The Twins filed a motion for a protective order under Minn. R. Civ. P. 26.03 in Ramsey County District Court in January 1998. The Twins argued (a) that the Attorney General's investigation was precluded by professional baseball's exemption from antitrust laws; (b) that the investigation was precluded by the Commerce Clause of the United States Constitution; and (c) that the CIDs were overly broad and compliance was unduly burdensome. On February 9, 1998, the state filed a motion to compel compliance with the CIDs.

On April 20, 1998, the district court denied the Twins' motion for a protective order and granted the state's motion to compel compliance with the CIDs. The court determined that the issue of whether professional baseball was exempt from Minnesota's antitrust laws under either federal caselaw or the Commerce Clause was a threshold issue that must be considered before the CIDs could be enforced. After a thorough examination of the breadth of the antitrust exemption found in the United States Supreme Court's "baseball trilogy"[4] and the treatment by other courts of professional baseball's exemption, the district court was persuaded by the "painstaking analysis" found in *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993), and found baseball's exemption to be limited to the "narrow area of the reserve clause." The court also found the Twins' Commerce Clause

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[4] *Flood v. Kuhn*, 407 U.S. 258 (1972); *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953); *Federal Baseball Club of Baltimore, Inc. v. National League of Prof'l Baseball Clubs, Inc.*, 259 U.S. 200 (1922).

argument unpersuasive, finding the issue impossible to resolve absent a factual record.

The Twins moved to certify the April 20 order directly to the court of appeals. On May 11, 1998, the district court issued an order denying this request. In the same order, the court also limited the documents necessary for compliance with the CIDs to those generated within the last six years that dealt with (1) revenue sharing within MLB; (2) relocation or sale of MLB teams; and (3) MLB communications regarding "construction of and methods for obtaining new stadia." The Twins petitioned the court of appeals for discretionary review of the April 20 order.

The court of appeals denied review in an order opinion, holding that the question of professional baseball's exemption from antitrust laws under either federal caselaw or the Commerce Clause was "premature." The court's order stated specifically that the Twins retained the right to raise the exemption as an affirmative defense should prosecution occur. The Twins appealed, arguing that the court of appeals erred in not reaching the merits of the argument that professional baseball's exemption from federal antitrust laws precluded prosecution under state antitrust laws.

I.

A district court has broad discretion "to issue discovery orders" and will be reversed on appeal only upon an abuse of such discretion. *Shetka v. Kuepers, Kuepers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). In addressing a challenge to a civil investigative demand, a district court "is not required to weigh evidence and

resolve factual disputes in the same manner as at a trial." *Kohn v. State by Humphrey*, 336 N.W.2d 292, 296 (Minn. 1983).

The Attorney General has the authority to investigate and prosecute "violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade." Minn. Stat. § 8.31, subd. 1 (1998). The Attorney General may use civil investigative demands to obtain discovery "from any person regarding any matter, fact or circumstance, not privileged, which is relevant" to the investigation. Minn. Stat. § 8.31, subd. 2. No civil action need be commenced before the issuance of civil investigative demands; all that is required is that the Attorney General have "reasonable grounds to believe that any person has violated, or is about to violate, any of the laws" over which the Attorney General has investigative authority. *Id.* The scope of the inquiry must be within the authority of the Attorney General, the information requested must be "reasonably relevant," and the demand for documents "not too indefinite." *Kohn*, 336 N.W.2d at 297 (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). A claim of exemption from antitrust laws defeats an otherwise validly issued civil investigative demand only when the activities being investigated are clearly covered by the exemption. *See Associated Container Transp. (Australia) Ltd. v. United States*, 705 F.2d 53, 59 (2d Cir. 1983).

The Attorney General issued the CIDs to the Twins pursuant to an investigation of potential violations of Minnesota laws prohibiting (a) any "contract, combination, or conspiracy between two or more persons in unreasonable

restraint of trade or commerce;"[5] (b) the "establishment, maintenance, or use" of monopoly power;[6] and (c) price fixing, market allocation, and boycotts.[7] In briefs to the district court and this court, the state elaborated on its concern regarding a possible illegal boycott of Minnesota by the Twins, asserting that "it is reasonable to infer that the owners of MLB teams are acting in concert to effect an illegal boycott and/or a price fixing agreement. In addition, the evidence would also support an inference that [MLB] is unlawfully exercising joint monopoly power." For supporting evidence, the state points to numerous newspaper accounts and press releases containing allegations and inferences that the Twins, as well as the rest of MLB, would boycott Minnesota by prohibiting any major league baseball team from locating here in the future if a publicly-financed stadium was not built.

The state also cites several cases that limit the scope of professional baseball's exemption from antitrust laws. Arguing that there is no clear exemption for all antitrust claims brought against professional baseball, the state urges this court to allow the investigation to continue by affirming the court of appeals and the district court's order compelling compliance with the CIDs. The state argues that the extent of professional baseball's exemption and the effect of the Commerce Clause can be litigated properly only after the state makes specific charges and a factual record is developed.

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[5] Minn. Stat. § 325D.51 (1998).

[6] Minn. Stat. § 325D.52 (1998).

[7] Minn. Stat. § 325D.53, subd. 1 (1998).

The Twins' primary argument is not that the CIDs are outside the authority of the Attorney General under Minn. Stat. § 8.31, subd. 1, but that professional baseball is exempt from prosecution under antitrust laws both through a judicially created exemption and through the Commerce Clause. Thus, the threshold issue is the scope of professional baseball's exemption from Minnesota's antitrust laws, a legal issue we review de novo. *See Jacka v. Coca-Cola Bottling Co.*, 580 N.W.2d 27, 32 (Minn. 1998).

Minnesota's antitrust laws are generally interpreted consistently with federal courts' construction of federal antitrust laws. *See State by Humphrey v. Alpine Air Products, Inc.*, 490 N.W.2d 888, 894 (Minn. App. 1992), *aff'd*, 500 N.W.2d 788 (Minn. 1993); *see also State v. Duluth Bd. of Trade*, 107 Minn. 506, 517, 121 N.W. 395, 399 (1909). Both state and federal antitrust laws are to be broadly construed. *Abbott Labs. v. Portland Retail Druggists Ass'n, Inc.*, 425 U.S. 1, 11 (1976); *Minnesota-Iowa Television Co. v. Watonwan T.V. Improvement Ass'n*, 294 N.W.2d 297, 305 (Minn. 1980). This means that "exemptions from the antitrust laws must be construed narrowly." *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 (1982). A party claiming exemption bears the burden of proving that its conduct is exempt from antitrust laws. *Henderson Broad. Corp. v. Houston Sports Ass'n, Inc.*, 541 F. Supp. 263, 265 (S.D. Tex. 1982).

The United States Supreme Court first announced professional baseball's exemption from federal antitrust laws in *Federal Baseball Club of Baltimore, Inc. v. National League of Prof'l Baseball Clubs, Inc.*, 259 U.S. 200 (1922). The plaintiff in *Federal Baseball*, a member of the Federal League, was a

Baltimore baseball club that found itself without competitors following the National League's buy-out of the seven other Federal League teams. *Id.* at 207. The Baltimore club, as the sole remaining member of the Federal League, sued the National League under the Sherman Antitrust Act. *Id.* The Supreme Court, in an opinion written by Justice Oliver Wendell Holmes, held that the Sherman Antitrust Act did not apply to baseball because baseball did not involve interstate commerce. Justice Holmes wrote:

> The business is giving exhibitions of base ball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business. * * * [T]he transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words.

Id. at 208-09.

Although the holding of *Federal Baseball* could logically be applied to any type of live performance or exhibition, the Supreme Court never extended it to any other business. The Court exhibited its unwillingness to extend the exemption from antitrust laws to other types of performances when it held the following year that the baseball exemption set forth in *Federal Baseball* did not necessarily apply to the business of vaudeville performances. *See*

Hart v. B.F. Keith Vaudeville Exch., 262 U.S. 271, 273-74 (1923). Although vaudeville, like professional baseball, involved live performances made possible by transporting people and equipment across state lines, the Court reasoned that an antitrust suit against a vaudeville organization was not frivolous because "the apparatus sometimes is more important than the performers" and therefore commerce was potentially involved. *Id.* at 272-74.

The issue of baseball's exemption next came before the Supreme Court 30 years after *Federal Baseball*, during which time judicial understanding of what constituted "interstate commerce" had changed considerably. *See, e.g., Wickard v. Filburn*, 317 U.S. 111, 125, 128-29 (1942) (stating that the growing of wheat for intrastate consumption was governed by the Commerce Clause because Congress determined that the activity "exerts a substantial economic effect on interstate commerce"). In *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953), the Court considered a ballplayer's claim that baseball's reserve system[8] violated federal antitrust laws. *See id.* at

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[8] The reserve system, as applied through a reserve clause contained in every ballplayer's contract, meant that the initial team with which a ballplayer signed a contract had "a continuing and exclusive right to his services." *Toolson*, 346 U.S. at 362 n. 10 (Burton, J., dissenting). The club could unilaterally renew the player's contract when it expired, or release the player, or assign the player's contract to any other team, which would then have the same rights to the player's services. *See id.* at 362-63, n. 10. All Major League Baseball clubs agreed to abide by this system, meaning that a player who wished to break out of the reserve system and negotiate for himself would be declared ineligible and no other team would sign him. *Id.*

362. Pitcher George Toolson, who had signed a contract to play with the New York Yankees, refused to report from one farm club to another. Jeffrey S. Moorad, *Major League Baseball's Labor Turmoil: The Failure of the Counter-revolution*, 4 Vill. Sports & Ent. L.J. 53, 60 (1997). The Yankees then placed Toolson on the club's ineligible list, but because of the reserve system, no other team would sign him. *See id.* at 56, 60.

In a one-paragraph per curiam opinion, the Supreme Court noted that, after *Federal Baseball*, Congress had taken the Court's ruling "under consideration,"[9] but had declined to legislatively overrule professional baseball's exemption. *Toolson*, 346 U.S. at 357. Declining to overrule *Federal Baseball*, the Court left any change to Congress:

> The business [of baseball] has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. * * * We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without re-examination of the underlying issues, the judgments below are affirmed on the authority

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[9] In *Toolson*, the dissent noted that in 1952 the Subcommittee on the Study of Monopoly Power issued to the House of Representatives Committee on the Judiciary a report that found the business of baseball to be interstate in nature. *Toolson*, 346 U.S. at 358-59 (Burton, J., dissenting) (citing H.R. Rep. No. 82-2002, at 4, 5 (1952)). The 1952 report concluded that the reserve system was so vital to the stability of baseball that legislation condemning the reserve clause was not justified. *See Flood v. Kuhn*, 407 U.S. 258, 272-73 (1972) (citing the 1952 study as evidence of Congressional approval of baseball's antitrust exemption).

> of [*Federal Baseball*], so far as that decision determines that *Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.*

Id. (emphasis added).

In several cases following *Toolson*, the Supreme Court made it clear that professional baseball's exemption rested on "a narrow application of the rule of *stare decisis*" applicable only to baseball. *United States v. Shubert*, 348 U.S. 222, 230 (1955); *see also Radovich v. National Football League*, 352 U.S. 445, 451-52 (1957) (stating that the exemption was limited to "the business of baseball"). The Court declined to extend the exemption to theatre performances,[10] boxing,[11] football,[12] or basketball.[13] Were the exemption created by *Federal Baseball* not in existence, the Court stated it would treat baseball's reserve system the same as reserve systems of other professional sports. *Haywood v. National Basketball Ass'n*, 401 U.S. 1204, 1205 (1971).[14]

The Supreme Court's most recent and most thorough look at professional baseball's exemption came in *Flood v.*

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[10] *Shubert*, 348 U.S. at 230.

[11] *United States v. International Boxing Club of New York*, 348 U.S. 236, 242 (1955).

[12] *Radovich*, 352 U.S. at 451-52.

[13] *Haywood v. National Basketball Association*, 401 U.S. 1204, 1205 (1971).

[14] "Basketball * * * does not enjoy exemption from the antitrust laws. Thus the decision in this suit would be similar to the one on baseball's reserve clause which our decisions exempting baseball from the antitrust laws have foreclosed." *Haywood*, 401 U.S. at 1205.

Kuhn, 407 U.S. 258 (1972). Like *Toolson*, *Flood* involved a challenge to baseball's reserve system. *Id.* at 259. St. Louis Cardinals centerfielder Curt Flood brought an antitrust suit against the Commissioner of Baseball after the Commissioner denied Flood's request to become a free agent rather than report to the Philadelphia Phillies after being unwillingly traded to that team by the Cardinals. *Id.* at 264-65. Flood filed suit against the Commissioner, the presidents of the American and National Leagues, and the then-24 individual major league baseball clubs, charging, inter alia, violations of both federal and state antitrust laws. *Id.* at 265-66. Following a trial, the federal district court held that *Federal Baseball* and *Toolson* were dispositive of the antitrust claims and entered judgment for the defendants. *Flood v. Kuhn*, 309 F. Supp. 793 (S.D. N.Y. 1970), *aff'd*, 443 F.2d 264 (2d Cir. 1971), *aff'd*, 407 U.S. 258 (1972). The Second Circuit Court of Appeals affirmed. *Flood*, 443 F.2d at 264.

The Supreme Court affirmed in an opinion written by Justice Harry A. Blackmun. *Flood*, 407 U.S. at 258. In *Flood*, the Court delineated the circumstances surrounding *Federal Baseball* and outlined the application of *Federal Baseball* in subsequent cases. *Id.* at 269-80. The pattern that emerges is clear: the exemption set forth in *Federal Baseball* is limited strictly to professional baseball, and despite frequent invitations to review the issue, Congress has allowed the anomalous exemption to remain. *Id.* at 281-82. The Court acknowledged that the legal footings for the exemption were no longer valid, stating that "[p]rofessional baseball is a business and it is engaged in interstate commerce," but held that baseball remained exempt from federal antitrust law under the stare decisis

of *Federal Baseball* and *Toolson*. *Id.* at 282. The Court resolved any resulting inconsistency by embracing it:

> Even though others might regard [the aberration of *Federal Baseball* and *Toolson*] as "unrealistic, inconsistent, or illogical," * * * the aberration is an established one and one that has been recognized * * * [by] a total of five[15] consecutive cases in this Court. It is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis*, and one that has survived the Court's expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs.

Id. (internal citation omitted). The majority opinion ends by reciting the holding of *Toolson* that "the business of baseball" is exempt from antitrust legislation based on stare decisis and congressional inaction. *See id.* at 285.

Chief Justice Warren E. Burger concurred. *Flood*, 407 U.S. at 285. Although having "grave reservations as to the correctness of *Toolson*," the Chief Justice stated that "[c]ourts are not the forum in which this tangled web ought to be unsnarled." *Id.* at 285-86 (Burger, C.J., concurring). Justice William O. Douglas, joined by Justice William J. Brennan, dissented and disagreed with the Chief Justice's assessment of the proper forum for change, stating that "[*Federal Baseball*] is a derelict in the stream of

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[15] The five cases are *Federal Baseball*, 259 U.S. 200; *Toolson*; 346 U.S. 356; International Boxing, 348 U.S. 236; *Shubert*, 348 U.S. 222; and *Radovich*, 352 U.S. 445.

law that we, its creator, should remove." *Id.* at 286 (Douglas, J., dissenting).

While engagingly written, the *Flood* opinion is not clear about the extent of the conduct that is exempt from antitrust laws. The opinion begins by identifying the issue as whether "professional baseball's *reserve system* is within the reach of the federal antitrust laws." *Flood*, 407 U.S. at 259 (emphasis added). The facts before the Supreme Court clearly implicated only the reserve clause. *Id.* at 264-66. However, the holding is broader, stating that "we adhere once again to *Federal Baseball* and *Toolson* and to their application *to professional baseball.*" *Id.* at 284 (emphasis added). Thus, when interpreting the scope of *Flood*, we are seemingly offered the choice between either a narrow or a broad reading of professional baseball's antitrust exemption.

The "great weight of federal cases"[16] hold that *Flood* exempts the entire business of baseball from federal and state antitrust claims. *See, e.g., Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978) (holding that it is "clear" that the entire "business of baseball" is exempt from antitrust claims); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974) (per curiam) (holding antitrust claim properly dismissed, citing *Flood*); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Wash. 1995) (holding that *Flood*'s reaffirmation of *Toolson* extended immunity to "the business of baseball").

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[16] *See Butterworth v. National League of Prof'l Baseball Clubs*, 644 So.2d 1021, 1025 (Fla. 1994).

A different interpretation of *Flood* can be found in *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993). *Piazza* was precipitated by a situation analogous to the one before this court – the threatened move of the San Francisco Giants baseball club to Florida. *Id.* at 422-23. A partnership of investors, including plaintiff Vincent Piazza,[17] signed a letter of intent with Robert Lurie, the owner of the Giants, to purchase the team for $115 million. *Id.* at 422. The chair of MLB's Ownership Committee directed Lurie to negotiate with other potential purchasers in violation of the letter of intent and the Ownership Committee refused to grant the partnership the necessary permission to purchase and move the team. *Id.* at 422-23. The team was eventually sold to a group of San

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[17] Vincent Piazza was a childhood friend of former Los Angeles Dodgers manager Tommy Lasorda, who, as a favor, drafted Piazza's son Mike as the 1389th selection in the 1988 amateur draft. John W. Guarisco, *"Buy Me Some Peanuts and Cracker Jack," But You Can't Buy The Team: The Scope and Future of Baseball's Antitrust Exemption*, 1994 U. Ill. L. Rev. 651, 659 n.91 (citing Mel Antonen, *Piazza Works Hard on Fundamentals*, USA Today, Oct. 28, 1993, at 3C). Mike Piazza played catcher for the Dodgers well enough to be named the 1993 National League Rookie of the Year. Mark T. Gould, *Baseball's Antitrust Exemption: The Pitch Gets Closer and Closer*, 5 Seton Hall J. Sport L. 273, 283 n.38 (1995). Traded to the Florida Marlins on May 15, 1998, and then to the New York Mets on May 22, 1998, Mike Piazza has been named to the National League All-Star Team for six consecutive seasons, thus making Lasorda's favor to a childhood friend a phenomenally wise decision. *The Sporting News*, "Player Profiles – Mike Piazza" (visited Apr. 23, 1999) <http://www.sportingnews.com/baseball/players/1928>.

Francisco investors for $15 million less than Piazza's partnership had offered. John Gibeaut, *Skybox Shakedown*, A.B.A.J., June 1998, at 68, 71.

Piazza sued MLB on a number of grounds, including violations of the Sherman Antitrust Act. *Piazza*, 831 F.Supp. at 423-24. MLB moved to dismiss, arguing that "plaintiffs' federal claims fail to state a cause of action" and that the court lacked subject matter jurisdiction. *Id.* at 421. The *Piazza* court interpreted the Supreme Court's statement in *Flood* that baseball was a business engaged in interstate commerce as limiting the scope of the exemption to the reserve clause at issue in *Flood* and *Toolson*. *Id.* at 435-38. Hence, the *Piazza* court reasoned, the broad exemption articulated by other courts is an inappropriate application of stare decisis that erroneously expands professional baseball's exemption beyond the facts of *Flood* and *Toolson*. *Id.* at 437-48. Even applying a broad exemption, the court concluded that the ownership of baseball franchises had not been analyzed in light of *Federal Baseball* and therefore a factual record was necessary before a determination could be made.[18] *Id.* at 440-41.

In the present case, the Ramsey County District Court found *Piazza* to be more persuasive than other federal

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[18] One day after a congressional committee voted to strip professional baseball of its antitrust exemption, the remanded claim was settled, precluding development of a factual record. Gibeaut, A.B.A.J., June 1998 at 71. The exemption has never been eliminated by Congress.

cases that outlined a broader exemption. The court concluded that "the ruling in *Flood* confines [baseball's] antitrust exemption to the narrow area of the reserve clause." Because the state's allegations "go far beyond the question of the reserve system," the court issued an order compelling compliance with the CIDs. Although the court of appeals did not address the merits of the district court's legal analysis, its holding that the issues were "premature" is consistent with the position that professional baseball's antitrust exemption exists only as an affirmative defense to specific charges and not as a blanket of immunity from any antitrust investigation.

The *Piazza* opinion is a skillful attempt to make sense of the Supreme Court's refusal to overrule *Federal Baseball*, an opinion generally regarded as "not one of Mr. Justice Holmes' happiest days." *Salerno v. American League of Prof'l Baseball Clubs*, 429 F.2d 1003, 1005 (2d Cir. 1970), *cert. denied*, 400 U.S. 1001 (1971). But *Piazza* ignores what is clear about *Flood* – that the Supreme Court had no intention of overruling *Federal Baseball* or *Toolson* despite acknowledging that professional baseball involves interstate commerce. Although the facts of *Flood* deal only with baseball's reserve system, the Court's conclusion in *Flood* is unequivocal:

> We repeat for this case what was said in *Toolson*:
>
> > "Without re-examination of the underlying issues, the (judgment) below (is) affirmed on the authority of [*Federal Baseball*] * * * , so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." 346 U.S. at 357.

> And what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action.

Flood, 407 U.S. at 285.

As intellectually attractive as the *Piazza* alternative is, we are compelled to accept the paradox the Supreme Court acknowledged in *Flood* when it declined to overrule *Federal Baseball*. To borrow a phrase from the concurrence in *Flood*, this court is "not the forum in which this tangled web ought to be unsnarled." *Flood*, 407 U.S. at 286 (Burger, C.J., concurring). Professional baseball's exemption from antitrust laws may be an aberration, but we agree with those courts that believe "the Supreme Court should retain the exclusive privilege of overruling its own decisions." *McCoy*, 911 F. Supp. at 457 (quoting *Salerno*, 429 F.2d at 1005).

We choose to follow the lead of those courts that conclude the business of professional baseball is exempt from federal antitrust laws.[19] Further, we conclude that the sale and relocation of a baseball franchise, like the reserve clause discussed in *Flood*, is an integral part of the business of professional baseball and falls within the exemption.[20] In the past, we have deemed it proper to

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[19] Because our holding is dispositive of this action, we need not address the argument that the Commerce Clause prohibits the enforcement of state antitrust laws against appellants.

[20] *See State v. Milwaukee Braves, Inc.*, 144 N.W.2d 1, 15 (Wisc. 1966) ("The type of decision involved in this case, in essence, whether to admit a new member [of the league] in order to

look to decisions made under corollary federal statutes "of a similar character for the principle by which to construe our own statute." *Duluth Bd. of Trade*, 107 Minn. at 517, 121 N.W. at 399. Accordingly, we hold that the conduct of the Twins being investigated by the Attorney General is exempt from Minnesota, as well as federal, antitrust laws. Enforcement of the CIDs against the Twins is therefore outside the scope of the Attorney General's authority because no enforcement action could follow. *See Phoenix Bd. of Realtors, Inc. v. United States Dept. of Justice*, 521 F. Supp. 828, 830 (D. Ariz. 1981) (holding that "[a]n activity which is exempt from the antitrust laws, cannot form the basis of an antitrust investigation") (citation omitted). Because as a matter of law the Attorney General is precluded from prosecuting the Twins on these antitrust allegations, the district court erred when it issued an order compelling compliance with the CIDs. The Twins are entitled to a protective order under Minn. R. Civ. P. 26.03.

We reverse the court of appeals and remand this matter to the district court for proceedings consistent with this opinion.

LANCASTER, J., took no part in the consideration or decision of this matter.

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replace an existing member which desired to move to a new area, appears to be so much an incident of league operation as to fall within the exemption.").

STATE OF MINNESOTA COUNTY OF RAMSEY	DISTRICT COURT SECOND JUDICIAL DISTRICT
Minnesota Twins Partnership, Petitioner, vs. State of Minnesota, by Hubert H. Humphrey III, its Attorney General, Respondent.	D.Ct. 62-CX-568 ORDER

This matter came before the undersigned on the 18th day of March 1998 pursuant to the motion of the State for an order amending the caption of the case; the motion of the state for an order compelling compliance with pre-complaint discovery authorized under M.S. 8.31; and pursuant to Petitioner's motion for protective order under Minn. R. Civ. P. 26.03.

The appearances of counsel were as noted on the record.

Based upon a full consideration of both written and oral argument, the Court makes the following

ORDER:

1. The State's motion for amendment of the case caption is denied.

2. The State's motion for an order compelling compliance with pre-complaint discovery authorized by M.S. 8.31 is granted. The extent of such discovery

shall be subject to further submissions and argument of counsel.

3. The motion of Petitioner is denied.

4. The attached Memorandum is made a part hereof and incorporated by reference.

20 April 1998 BY THE COURT:

/s/ Margaret M. Marrinan
Margaret M. Marrinan
Judge of District Court

MEMORANDUM

The issue before the court is whether the Attorney General has reasonable grounds to investigate possible violations by Respondents of Minnesota's Antitrust Act.

M.S. 8.31[1] is the vehicle by which this case comes before the Court. The statute instructs the Attorney General to investigate violations of the business and trade

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[1] MS 8.31.(Subd.1): The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade. . . .

(Subd.2): "When the attorney general has information providing a reasonable ground to believe that any person has violated, or is about to violate, any of the laws of this state referred to in subdivision 1, the attorney general shall have power to investigate those violations, or suspected violations, and to take such steps as are necessary to cause the arrest and prosecution of all persons violating. . . . laws respecting unfair, discriminatory, or other unlawful practices in business, commerce, or trade. In connection with investigation under this section the attorney general upon specifying the nature of the violation or suspected violation may obtain discovery from any

laws of this state and authorizes discovery without commencement of a civil action. Acting under this authority, the state seeks to investigate the relationship of the Minnesota Twins to organized baseball, and to ascertain whether the relationship violates, inter alia, the state's antitrust laws.

This case differs from those typically brought under the statute in that there exist fundamental questions as to the applicability of the particular law (antitrust), regardless of the underlying facts. In view of this, the Court believes that Petitioner is correct that the issue of whether the anti-trust exemption pertains is a threshold to be crossed before any Civil Investigatory Demand (CID) should go forward.

The following analysis will address first, whether baseball is exempt from state antitrust laws; second whether the Commerce Clause of the United States Constitution precludes application of the state antitrust laws.

I. The Antitrust Exemption

Assuming, *arguendo*, that all of the information to which the State alludes is true, the bottom line is whether any potential antitrust violation based upon such facts is exempt from antitrust laws under the 1922 United States Supreme Court case *Federal Baseball* and its progeny.

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person regarding any matter, fact or circumstance, not privileged, which is relevant to the subject matter involved in the pending investigation. . . . The discovery may be obtained without commencement of a civil action. . . . "

In *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, Inc.*[2], plaintiff, the sole remaining club within the defunct Federal League, had brought suit under the Sherman Act; it asserted that the reserve clause shut out the Federal League and its member clubs from competing for players with the National and American Leagues, ultimately damaging the Plaintiff. Addressing the anti-competitive impact of the then-existing "reserve clause" contained in the contracts of players in the National and American Leagues, the Supreme Court held that the business of giving exhibitions of professional baseball was purely a state affair, and did not constitute trade or commerce within the meaning of the Sherman Act.

The Court reasoned that the mere fact that players must cross state lines to play with their competition was an incidental which did not change the character of the business as "purely state affairs". Thus, "the restrictions by contract that prevented the plaintiff from getting players to break their bargains and the other conduct charged against the defendants[3] were not an interference with commerce among the States."[4]

Some thirty years elapsed before the next inning, *Toolson v. New York Yankees, Inc.* The U.S. Supreme Court, writing Per Curiam, and without setting forth the specific facts which gave rise to the appeal, held that *Federal*

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[2] 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed.898 (1922).

[3] The buying up of the remaining Federal League Clubs and the dissolution of that league in 1915.

[4] 259 U.S. at 209.

Baseball stood for the broad proposition that "the business of providing baseball games for profit between clubs of professional baseball players was not within the scope of the federal anti-trust laws. . . . [and that] the business has thus been left for thirty years to develop, on the understanding that it was not subject to existing anti-trust legislation . . . ".[5]

The *Toolson* Court concluded its paragraph-long opinion affirming the lower court judgments based on *Federal Baseball* "so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws."[6]

Mr. Justice Burton, in a dissent foreshadowing *Flood v. Kuhn*[7], presciently criticized the *Toolson* majority, calling it a "contradiction in terms to say that the defendants in the cases before us are not now engaged in interstate trade or commerce as those terms are used in the Constitution of the United States and in the Sherman Act." 74 S.Ct. 78.

He further analyzed the holding in *Federal Baseball* more narrowly than the majority:

> "In the *Federal Baseball Club* case the Court did not state that even if the activities of organized baseball amounted to interstate trade or commerce those activities were exempt from the

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[5] *Toolson v. New York Yankees, Inc. et al,* 346 US 356 (1953). The Court went on to say that "we think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation". *Id.*

[6] *Id.*

[7] 407 U.S. 258 (1972).

> Sherman Act. . . . Although counsel did argue that the activities of organized baseball, even if amounting to interstate commerce, did not violate the Sherman Act, the Court significantly refrained from expressing its opinion on that issue."[8]

At the end of the 1969 baseball season Curt Flood, who had played twelve seasons as a St. Louis Cardinal, was traded to Philadelphia without his knowledge or consent. Flood wrote a letter to baseball commissioner Bowie Kuhn in which he declared his challenge to the reserve system:

> " . . . I do not feel that I am a piece of property to be bought and sold irrespective of my wishes."[9]

The issue in *Flood v. Kuhn,* as framed by Mr. Justice Blackmun, was whether "professional baseball's reserve system is within reach of the federal antitrust laws."[10] While affirming the dismissal of the complaint based on *Federal Baseball* and *Toolson,* Blackmun took pains to analyze the history of the exemption, and to set forth a number of findings. Among them:

1. Professional baseball is a business and it is engaged in interstate commerce.

2. With its reserve system enjoying exemption from the federal antitrust laws (emphasis supplied) baseball is, in a very distinct sense, an exception

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[8] 346 U.S. 356 at 360. Emphasis supplied.

[9] John Helyar, *Lords of the Realm, The Real History of Baseball,* 1994, p. 103.

[10] 407 US 258 at 258, 92 S.Ct. 2099 at 2100.

and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball.

3. Even though others might regard [this status] as 'unrealistic, inconsistent, or illogical'. . . . this is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis*, and one that has survived the Court's expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs.

4. Other professional sports operating interstate . . . are not so exempt.

5. The advent of radio and television, with their consequent increased coverage and additional revenues, has not occasioned an overruling of *Federal Baseball* and *Toolson*.

6. The Court has emphasized that since 1922 baseball, with full and continuing congressional awareness, has been allowed to develop and to expand unhindered by federal legislative action. . . . The Court, accordingly, has concluded that Congress as yet has had no intention to subject baseball's reserve system (emphasis supplied) to the reach of the antitrust statutes. . . . [11]

The *Flood* Court also referred to the 1952 Report of the Subcommittee on the Study of Monopoly Power of the House Committee on the Judiciary, which addressed the rationale for the protection afforded the reserve clause:

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[11] 407 US 258 at 282; 92 S.Ct. 2099 at 2112.

> "On the other hand the overwhelming preponderance of the evidence established baseball's need for some sort of reserve clause. Baseball's history shows that chaotic conditions prevailed when there was no reserve clause. Experience points to no feasible substitute to protect the integrity of the game or to guarantee a comparatively even competitive struggle. The evidence adduced at the hearings would clearly not justify the enactment of legislation flatly condemning the reserve clause."[12]

This court cannot help but note that the voting lineup in *Flood*: Mr. Justice Blackmun with two Justices concurring; the Chief Justice and one Justice concurring in all but the first part of the opinion. Three dissents, including lengthy dissenting opinions filed by Mr. Justices Douglas and Marshall. (Mr. Justice Powell took no part in the decision.) Thus *Flood* might be properly described as a 3-2-3 decision, one which reflected the ambivalence of the Court regarding the issue.

In the concurring opinion filed by Mr. Chief Justice Burger, he expressed his "grave reservations as to the correctness of *Toolson*".[13] Lengthy dissenting opinions were filed by Mr. Justices Douglas and Marshall.

Mr. Justice Douglas disparaged the "romantic view of a rather dismal business account over the last 50 years", with its roots in the "narrow, parochial view of commerce" taken by the 1922 Supreme Court. He noted that with the evolution of a number of landmark cases

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[12] 407 U.S. at 272.

[13] 407 U.S. at 286; 92 S.Ct. at 2113.

decided in the fifty years since *Federal Baseball* "the whole concept of commerce has changed". Referring specifically to the evolution of baseball he reflected that:

> Baseball is today big business that is packaged with beer, with broadcasting, and with other industries. The beneficiaries of the *Federal Baseball Club* decision are not the Babe Ruths, Ty Cobbs, and Lou Gehrigs.[14]

That the focus of *Flood* was the reserve clause, rather than the very broad interpretation suggested by the Petitioner, is underscored by his observation that:

> The owners, whose records many say reveal a proclivity for predatory practices, do not come to us with equities. The equities are with the victims of the reserve clause.[15]

It is noteworthy that in each of the above three cases, it was within the factual backdrop of the reserve clause that the antitrust exemption was addressed.

In the realm of antitrust, since the Sherman Act expresses a "longstanding congressional commitment to the policy of free markets and open competition. . . . accordingly, our precedents consistently hold that exemptions from the antitrust laws must be construed narrowly". *Union Labor Life Insurance Company v. Pireno et al.*, 458 US 119 at 126 (1982). This narrow interpretation is appropriate because:

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[14] 407 U.S. 286-287.

[15] Douglas notes in his fourth footnote that "this case gives us for the first time a full record showing the reserve clause in actual operation". *Id.* at 290.

> Antitrust laws in general, and the Sherman Act in particular, are the Magna Charta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete – to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle it can muster. Implicit in such freedom is the notion that it cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important sector of the economy.[16]

While some federal courts have interpreted the scope of *Federal Baseball*'s exemption more broadly in the 1970's and 1980's[17], none have dissected it more thoroughly, or in greater detail, than Judge Padova in *Piazza v. Major League Baseball*[18]. While acknowledging that the more broad view of the exemption (the "business of baseball") may have been correct up until 1972, the court in *Piazza* zeroed in on the reasoning of the *Flood* case and concluded that " . . . *Flood* . . . stripped from *Federal Baseball* and *Toolson* any precedential value those cases may have

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[16] *U.S. v. Topco Assoc. Inc.*, 405 U.S. 596 at 610, 92 S.Ct. 1126 at 1134 (1972).

[17] For example, *Finley v. Kuhn*, 569 F.2d 527 (7th Cir.), cert den. 439 U.S. 876 (1978); *Professional Baseball Schs. and Clubs, Inc. v. Kuhn*, 693 F.2d 1085 (11th Cir.1982).

[18] 831 F. Supp. 420 (E.D. Pa. 1993).

had beyond the particular facts there involved, i.e. the reserve clause".

Judge Padova noted that the *Flood* Court rejected the reasoning of *Federal Baseball*, finding that baseball is a business engaged in interstate commerce. Having done so, the Court then justified the specific result of that decision. See discussion of *Flood, supra*.

Petitioner cites the various federal courts which apply a more broad exception than does *Piazza*. Among then is *Finley v. Kuhn*.[19] That court adopted the broad interpretation of the three leading cases, i.e. that the Supreme Court "intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws".[20] However, the court ignored the *Flood* Court's focus on the reserve system, and disregarded the effect of *Flood*'s findings on the precedential value of the earlier cases.

Piazza, in its painstaking analysis and its discussion of the doctrine of *stare decisis*, is more persuasive to this court. By correctly pointing out that the American system of precedent is based on both the reasoning and the result of a case, and that lower courts are bound by both, the *Piazza* Court clarifies our understanding of *Flood*'s pivotal repudiation of the broad rule propounded in *Federal Baseball*, and merely aped in *Toolson*. *Flood* stands for the

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[19] 569 F.2d 527 (7th Cir.), cert. den. 439 U.S. 876 (1978).

[20] *Id.* at 541.

establishment of a much narrower antitrust exemption applicable only to baseball's reserve clause:[21]

> " . . . it becomes clear that, before *Flood*, lower courts were bound by both the rule of *Federal Baseball* and *Toolson* (that the business of baseball is not interstate commerce and thus not within the Sherman Act) and the result of those decisions (that baseball's reserve system is exempt from the antitrust laws). . . . [However] in Flood, the Supreme Court exercised its discretion to invalidate the rule of *Federal Baseball* and *Toolson*. Thus no rule from those cases binds the lower courts as a matter of *stare decisis*. The only aspect of *Federal Baseball* and *Toolson* that remains to be followed is the result or disposition based upon the facts there involved, which the Court in *Flood* determined to be the exemption of the reserve system from the antitrust laws."[22]

The *Piazza* reasoning is supported by *United States v. International Boxing Club of New York, Inc.*[23] Although Defendants there sought an exemption under the authority of *Federal Baseball*, the Court held that *stare decisis* did not apply, noting that the controlling consideration in *Federal Baseball* "was, instead a very practical one – the degree of interstate activity involved in the particular business

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[21] From the history since *Flood* we now realize that it was a Pyrrhic victory for baseball's ownership. With the rule of *stare decisis* left as the *only* prop for the reserve system, and an "unrealistic, inconsistent (and) illogical" one at that, the reserve system gradually gave way under pressures of the collective bargaining process. See *Lords of the Realm, supra.*

[22] 831 F.Supp. at 438.

[23] 348 U.S. 236, 75 S.Ct. 259, 99 L.Ed.290 (1955).

under review".[24] *Flood* rendered that issue obsolete, confining *Federal Baseball*'s impact to the reserve clause. Just as what remains of the reserve clause is but a shadow of its former self, so too is the effect of *Federal Baseball*.

Piazza is also cited with approval in the 1994 Florida Supreme Court case *Butterworth v. National League of Professional Baseball Clubs*[25]. That court addressed the question of the application of *Federal Baseball* to decisions involving (as here) the sale and location of baseball franchises. There, as in *Piazza*, the court found that rule *stare decisis* of *Federal Baseball* had been negated by *Flood*, and that such negation "seriously undercuts the precedential value" of *Federal Baseball* and *Toolson*[26]. See also *Morsani v. Major League Baseball*[27].

The Court concludes that the ruling in *Flood* confines the antitrust exemption to the narrow area of the reserve clause.

II. The Commerce Clause

Does the Commerce Clause of the United States Constitution bar application of state antitrust laws to interstate professional sport leagues in the absence of a baseball antitrust exemption?[28]

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[24] 348 US 236 at 243.

[25] 644 So.2d 1021 (1994).

[26] 644 So.2d at 1024.

[27] 663 So.2d 654 (1995).

[28] "The Congress shall have the power to regulate commerce with foreign nations and among the several states,

Although the Commerce Clause conferred on the Federal Congress the power to regulate commerce, that grant does not necessarily exclude all state power of regulation. "The grant of commercial power to Congress does not contain any terms which expressly exclude the states from exercising an authority over its subject-matter. If they are excluded it must be because the nature of the power, thus granted to Congress, requires that a similar authority should not exist in the states."[29]

The *Cooley* case went on to reason that "if it were admitted that the existence of this power in Congress, like the power of taxation, is compatible with the existence of a similar power in the states, then it would be in conformity . . . to hold that the mere grant of such a power to Congress, did not imply a prohibition on the states to exercise the same power".[30]

The Court must balance the nature and extent of the burden which the state law would impose on interstate commerce, the need for local control versus the free flow of commerce, as well as the relative weights of the state and national interests involved. This determination must be made based on "relevant factual material which will 'afford a sure basis' for an informed judgment . . . "[31]

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and with the Indian tribes." United States Constitution, Art. I, Section 8.

[29] *Cooley v. Board of Wardens*, 53 U.S. 299 at 315, 12 How. 299 (1851).

[30] *Id.*

[31] *Southern Pac. Co. v. Arizona*, 325 U.S. 761 at 770, 65 S.Ct. 1515 at 1521 (1945).

In weighing the competing interests, the balance that must be struck in determining whether state policy burdens interstate commerce is not dependent on the effect it may have on the particular item of commerce, but rather on its impact on the national interest in preserving that commerce in its unregulated form.[32]

It is well settled that a state may exercise its police powers through antitrust laws even though an incidental benefit might accrue to local commerce, so long as the law and its operation do not discriminate against interstate commerce or disrupt its required uniformity. *Huron Portland Cement v. City of Detroit.*[33] Petitioner bears the burden of demonstrating that state legislation discriminates against interstate commerce on its face or in its effect.[34] That burden is a heavy one, for a "duly-enacted statute carries with it a 'presumption of constitutionality' . . . and a party challenging the statute must establish beyond a reasonable doubt that the statute violates a claimed right".[35]

The State's allegations, as represented in the early portion of its Memorandum of February 9, 1998, are extremely serious. If true, they might indeed run afoul of antitrust legislation, whether state or federal.

Whether these allegations can be supported by evidence other than that gleaned from the popular press cannot be ascertained without resort to the CID process.

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[32] *Parker v. Brown,* 317 U.S. 341, 63 S.Ct. 307 (1943).

[33] 362 U.S. 440, 80 S.Ct. 813 (1960).

[34] *Hughes v. Oklahoma,* 441 U.S. 322, 99 S.Ct. 1727 (1979).

[35] *Matter of Blilie,* 494 NW2d 877 at 881 (Minn. 1993).

Whether the Commerce Clause would bar any action thereafter depends on the underlying facts:

> Fraudulent or unconscionable conduct of those so engaged which is injurious to their patrons, is peculiarly a subject of local concern and the appropriate subject of local regulation.[36]

In the 1996 case, *Morsani v. Major League Baseball*[37], the Florida Court of Appeals was asked by Major League Baseball to dismiss Morsani's state antitrust complaint without benefit of discovery. The court declined to do so, holding that state antitrust laws not in direct conflict with federal antitrust laws are neither preempted nor precluded by any federal considerations. *Postema v. National League of Professional Baseball Clubs*[38]; *California v. ARC America Corp.*[39]

Parenthetically, this Court cannot help but note Petitioner's assertion that *Flood* supports the proposition that the application of state antitrust law violates the Commerce Clause. However the language cited at page 15 of its memorandum is taken out of context. The full quotation reads:

> The petitioner's argument as to the application of state antitrust laws deserve a word. Judge Cooper rejected the state law claims because state antitrust regulation would conflict with

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[36] *California v. Thompson*, 313 U.S. 109 at 115; 61 S.Ct. 930 at 933. (1941).

[37] *Id.* Ft.Nt.26.

[38] 799 F.Supp. 1475 (S.D. N.Y. 1992), rev. in part on other grounds, 998 F.2d 60 (2d Cir. 1993).

[39] 490 U.S. 93, 109 S.Ct. 1661 (1989).

> federal policy and because "national uniformity [is required] in any regulation of baseball and its reserve system." (Citation omitted) The Court of Appeals, in affirming, stated [As] the burden on interstate commerce outweighs the states' interests in regulating baseball's reserve system, the Commerce Clause precludes the application here of state antitrust law.[40]

The allegations at issue go far beyond the question of the reserve system. Whether the burden the state antitrust statute places on interstate commerce "clearly exceeds the local benefits"[41], particularly in view of parallel federal antitrust law, must be decided only after a review of the underlying facts.

20 April 1998 MMM

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[40] *407 U.S. at 284, 92 S.Ct. at 2113.*

[41] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 847 (1970).

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court file: 62-CX-98-568

Minnesota Twins Partnership,
a Minnesota general partnership,

Petitioner,

v.

Order

State of Minnesota, by
Hubert H. Humphrey III,
its Attorney General,

Respondent,

Milwaukee Brewers Baseball Club,
Limited Partnership; The American
League of Professional Baseball Clubs;
The National League of Professional
Baseball Clubs; the Office of the
Commissioner of Baseball; and North
Carolina Major League Baseball, LLC.,

Intervenors.

This matter came before the Court on the 8th day of May 1998. Roger Magnuson, Esq. and Peter Carter, Esq. appeared on behalf of the Petitioner; Peter Hofrenning, Esq. and Ann Kinsella, Esq. appeared on behalf of the State of Minnesota; Charles Shreffler, Esq. appeared on behalf of the Intervenors. Based upon the argument of counsel, and following a telephone conference between counsel and Court on 11 May 1998, the Court makes the following

ORDER:

1. Petitioner's motion to certify for appeal under Rule 103.03(h), Rules of Civil Appellate Procedure the following question:

> "Whether the Attorney General has reasonable grounds to investigate possible violations by Respondents [Baseball Parties] of Minnesota's Antitrust Act."

is denied.

2. The State's motion to compel production of documents pursuant to M.S. 8.31 is granted in part, and limited to the following:

> A. All documents relating to or referring to the sharing of revenue generated by the Minnesota Twins with other MLB clubs, the National and American Leagues, and Major League Baseball. This shall include information on the method and proportion of revenue sharing during interleague play. The information provided shall cover the period of time from January 1, 1992 through the present.
>
> B. All documents pertaining to the potential relocation or sale of major league baseball teams from January 1, 1992 through the present.
>
> C. All documents relating to or referring to communications with any representative of the National and American Leagues, and Major League Baseball and pertaining to the construction of and methods for obtaining new stadia, whether in Minnesota or any other state. The information provided shall cover the period of time from January 1, 1992 through the present.

D. The above information shall be supplied to the State of Minnesota within thirty days of this Order.

11 May 1998

BY THE COURT:

/s/ Margaret M. Marrinan
Margaret M. Marrinan
Judge of District Court

MEMORANDUM

Petitioner Minnesota Twins' motion to certify the underlying question of whether the Attorney General has reasonable grounds to investigate possible anti-trust violations by the baseball establishment is brought under Rule 103.03(h) of the Rules of Civil Appellate Procedure. That rule, which has been strictly construed by case law, provides for such certification where the court "denies a motion to dismiss for failure to state a claim upon which relief can be granted or from an order which denies a motion for summary judgment". Neither of those pertain here, since the vehicle which brings this matter into court is a motion for protective order filed on behalf of organized baseball. Thus the Court is unable to accommodate the parties and accelerate the appeal of the Order of April 20, 1998.

Turning to the question of requested CIDs, it appears at this time that their breadth is overly broad, not necessarily in their content, but rather in the time component, which stretches back to 1959, practically forty years. On the other hand, even though counsel for Petitioner have argued that there is a four year statute of limitations

under the state anti-trust statute, any potential anti-trust violation is unlikely to be a fixed point in time, but rather a continuing course of conduct.

With that in mind, the Court believed there would be two potential periods of time to which these CIDs might appropriately be confined: a) the post-*Flood*[1] period (1972 to the present); or the b) post-*Butterworth*[2] period. This last, arising out of facts occurring in 1992, struck the Court as an appropriate starting point not simply because of its similarities to the present state of major league baseball in Minnesota. Given the vast amount of information demanded by the State, a more careful, deliberate and focused investigation, rather than the more broad approach taken by the State, is appropriate. In the event that a smoking gun is discovered within the more restrictive time period, then further discovery may be allowed.

11 May 1988

M3

/s/M3

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[1] *Flood v. Kuhn*, 407 U.S. 258 (1972).

[2] *Butterworth v. National League of Professional Baseball Clubs*, 644 So.2d 1021 (1994).

STATE OF MINNESOTA
IN COURT OF APPEALS

Minnesota Twins Partnership, et al.,

Petitioners,

vs.

State of Minnesota, by
Hubert H. Humphrey, III,
its Attorney General,

Respondent.

ORDER

#C9-98-890

(Filed
June 03, 1998)

Considered and decided by Toussaint, Chief Judge Huspeni, Judge, and Willis, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

Petitioners seek discretionary review of an order compelling compliance with a civil investigatory demand. To obtain discovery, the attorney general must establish the existence of reasonable grounds to believe that there is or may be a violation of state law. Minn. Stat. § 8.31 (1996); ***Kohn v. State by Humphrey,*** 336 N.W.2d 292, 296 (Minn. 1983). Investigation will not foreclose any defenses the petitioners may assert to prosecution, if it occurs. ***See Kohn,*** 336 N.W.2d at 299 (indicating that defense of selective prosecution may not be available at investigatory stage). Appellate review of petitioners' assertions that the United States Supreme Court has recognized an antitrust exemption for organized baseball that would preclude prosecution and that application of

state antitrust laws would violate the Commerce Clause of the Constitution is premature.

IT IS HEREBY ORDERED the petition for discretionary review is denied.

Dated: June 2, 1998

BY THE COURT

/s/ Edward Toussaint
Chief Judge

STATE OF MINNESOTA

Minnesota Twins Partnership, Petitioner,

Appellant,

Milwaukee Brewers Baseball Club,
Limited Partnership, et al., Petitioners,

Appellants,

vs.

State of Minnesota, by Michael A. Hatch,
its Attorney General,

Respondent.

[X] **Supreme Court**

[ ] **Court Of Appeals**

JUDGMENT

C9-98-890

Appellate Court Case Number

Trial Court Case Number

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order, *of the Court below, herein appealed from, to wit, of the District Court within and for the County of* Ramsey *be and the same hereby is* reversed and remanded in accordance with opinion *and that judgment be entered accordingly. A*

certified copy of the entry of judgment and the Court's decision is herein transmitted and made part of the remittitur.

Dated and signed:
FOR THE COURT
June 7, 1999
Dated

Attest: Frederick K. Grittner
Clerk of the Appellate Courts

By: /s/ Wendy Johnson
Assistant Clerk

112 STAT. 2824
PUBLIC LAW 105-297 [S. 53]; October 27, 1998

BASEBALL – ANTITRUST

For Signing Statement of Act, see Statement for P.L. 105-297 in U.S.C.C. & A.N Legislative History Section

An Act to require the general application of the antitrust laws to major league baseball, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Curt Flood Act of 1998".

SEC. 2. PURPOSE.

It is the purpose of this legislation to state that major league baseball players are covered under the antitrust laws (i.e., that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act does not change the application of the antitrust laws in any other context or with respect to any other person or entity.

SEC. 3. APPLICATION OF THE ANTITRUST LAWS TO PROFESSIONAL MAJOR LEAGUE BASEBALL.

The Clayton Act (15 U.S.C. Sec. 12 et seq.) is amended by adding at the end the following new section:

"SEC. 27. (a) Subject to subsections (b) through (d), the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

"(b) No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to –

> "(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;
>
> "(2) the agreement between organized professional major league baseball teams and

the teams of the National Association of Professional Baseball Leagues, commonly known as the 'Professional Baseball Agreement', the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball's minor leagues;

"(3) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, the relationship between the Office of the Commissioner and franchise owners, the marketing or sales of the entertainment product of organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

"(4) any conduct, acts, practices, or agreements protected by Public Law 87-331 (15 U.S.C. Sec. 1291 et seq.) (commonly known as the 'Sports Broadcasting Act of 1961');

"(5) the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons; or

"(6) any conduct, acts, practices, or agreements of persons not in the business of organized professional major league baseball.

"(c) Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is –

"(1) a person who is a party to a major league player's contract, or is playing baseball at the major league level; or

"(2) a person who was a party to a major league player's contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

"(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws: *Provided however,* That for the purposes of this paragraph, the alleged antitrust violation shall not include any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

"(4) a person who was a party to a major league player's contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional

major league baseball and the exclusive collective bargaining representative of major league baseball players.

"(d)(1) As used in this section, 'person' means any entity, including an individual, partnership, corporation, trust or unincorporated association or any combination or association thereof. As used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not 'in the business of organized professional major league baseball'.

"(2) In cases involving conduct, acts, practices, or agreements that directly relate to or affect both employment of major league baseball players to play baseball at the major league level and also relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level and the other areas set forth in subsection (b), only those components, portions or aspects of such conduct, acts, practices, or agreements that directly relate to or affect employment of major league players to play baseball at the major league level may be challenged under subsection (a) and then only to the extent that they directly relate to or affect employment of major league baseball players to play baseball at the major league level.

"(3) As used in subsection (a), interpretation of the term 'directly' shall not be governed by any interpretation of section 151 et seq. of title 29, United States Code (as amended).

"(4) Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws.

"(5) The scope of the conduct, acts, practices, or agreements covered by subsection (b) shall not be strictly or narrowly construed.".

Approved October 27, 1998.

144 Cong. Rec. S9621-01 (July 31, 1998)
Congressional Record – Senate
Proceedings and Debates of the 105th Congress,
Second Session
Friday, July 31, 1998

CURT FLOOD ACT OF 1998

Mr. WELLSTONE.

Mr. President, late last night, the Senate passed by unanimous consent S. 53. I have been contacted by the Attorney General of my State, Hubert H. Humphrey III, and asked to try to clarify a technical legal point about the effect of this legislation. The State of Minnesota, through the office of Attorney General, and the Minnesota Twins are currently involved in an antitrust-related investigation. It is my understanding that S. 53 will have no impact on this investigation or any litigation arising out of the investigation.

Mr. HATCH.

That is correct. The bill simply makes it clear that major league baseball players have the same rights under the antitrust laws as do other professional athletes. The bill does not change current law in any other context or with respect to any other person or entity.

Mr. WELLSTONE.

Thank you for that clarification. I also note that several lower courts have recently found that baseball currently enjoys only a narrow exemption from antitrust laws and that this exemption applies only to the reserve system. For example, the Florida Supreme Court in *Butterworth v. National League,* 644 So.2d 1021 (Fla. 1994), the U.S. District Court in Pennsylvania in *Piazza v. Major*

League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993) and a Minnesota State court in a case involving the Twins have all held the baseball exemption from antitrust laws is now limited only to the reserve system. It is my understanding that S. 53 will have no effect on the courts' ultimate resolution of the scope of the antitrust exemption on matters beyond those related to owner-player relations at the major league level.

Mr. HATCH.

That is correct. S. 53 is intended to have no effect other than to clarify the status of major league players under the antitrust laws. With regard to all other context or other persons or entities, the law will be the same after passage of the Act as it is today.

Mr. LEAHY.

I concur with the statement of the Chairman of the Committee. The bill affects no pending or decided cases except to the extent that courts have exempted major league baseball clubs from the antitrust laws in their dealings with major league players. In fact, Section 3 of the legislation makes clear that the law is unchanged with regard to issues such as relocation. The bill has no impact on the recent decisions in federal and state courts in Florida, Pennsylvania and Minnesota concerning baseball's status under the antitrust laws.

Mr. WELLSTONE.

I thank the Senator. I call to my colleagues attention the decision in *Minnesota Twins v. State by Humphrey*, No. 62-CX-98-568 (Minn. dist. Court, 2d Judicial dist., Ramsey County April 20, 1998) reprinted in 1998-1 Trade Cases

(CCH) 72,136. ‹› 144 Cong. Rec. S9621-01, 1998 WL 431408 (Cong.Rec.)

144 Cong. Rec. S9494-03 (July 30, 1998)
Congressional Record – Senate
Proceedings and Debates of the 105th Congress,
Second Session
Thursday, July 30, 1998

CURT FLOOD ACT OF 1997

Mr. JEFFORDS.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 231, S. 53.

The PRESIDING OFFICER.

Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 53) to require the general application of the antitrust laws to major league baseball, and for other purposes.

The Senate proceeded to consider the bill which has been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Curt Flood Act of 1997".

SEC. 2. PURPOSE.

It is the purpose of this legislation to clarify that major league baseball players are covered under the antitrust laws (i.e., that major league players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act does not change the application of the antitrust laws in any other context or with respect to any other person or entity.

SEC. 3. APPLICATION OF THE ANTITRUST LAWS TO PROFESSIONAL MAJOR LEAGUE BASEBALL.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding at the end the following new section:

"SEC. 27. (a) The conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball relating to or affecting employment to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce: Provided, however, That nothing in this subsection shall be construed as providing the basis for any negative inference regarding the caselaw concerning the applicability of the antitrust laws to minor league baseball.

"(b) Nothing contained in subsection (a) of this section shall be deemed to change the application of the

antitrust laws to the conduct, acts, practices, or agreements by, between, or among persons engaging in, conducting, or participating in the business of organized professional baseball, except the conduct, acts, practices, or agreements to which subsection (a) of this section shall apply. More specifically, but not by way of limitation, this section shall not be deemed to change the application of the antitrust laws to –

"(1) the organized professional baseball amateur draft, the reserve clause as applied to minor league players, the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the 'Professional Baseball Agreement', the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to professional organized baseball's minor leagues;

"(2) any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, and the relationship between the Office of the Commissioner and franchise owners;

"(3) any conduct, acts, practices, or agreements protected by Public Law 87-331 (15 U.S.C. 1291 et seq.) (commonly known as the 'Sports Broadcasting Act of 1961'); or

"(4) the relationship between persons in the business of organized professional baseball and umpires or

other individuals who are employed in the business of organized professional baseball by such persons.

"(c) As used in this section, 'persons' means any individual, partnership, corporation, or unincorporated association or any combination or association thereof.".

AMENDMENT NO. 3479

Mr. JEFFORDS.

Senator HATCH has a substitute amendment at the desk. I ask for its consideration.

The PRESIDING OFFICER.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont ‹Mr. JEFFORDS›, for Mr. HATCH, proposes an amendment numbered 3479.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Curt Flood Act of 1998".

SEC. 2. PURPOSE.

It is the purpose of this legislation to state that major league baseball players are covered under the antitrust

laws (i.e., that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act does not change the application of the antitrust laws in any other context or with respect to any other person or entity.

SEC. 3. APPLICATION OF THE ANTITRUST LAWS TO PROFESSIONAL MAJOR LEAGUE BASEBALL.

The Clayton Act (15 U.S.C. s12 et seq.) is amended by adding at the end the following new section:

"SEC. 27(a) Subject to subsections (b) through (d) below, the conduct, acts, practices or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

"(b) No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices or agreements other than those set forth in subsection (a). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices or agreements that do not directly relate to or affect employment of major league baseball players to play

baseball at the major league level, including but not limited to –

"(1) any conduct acts, practices or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players.

"(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the 'Professional Baseball Agreement,' the relationship between organized profession major league baseball and organized professional minor league baseball, and organized professional minor league baseball, or any other matter relating to organized professional baseball's minor leagues;

"(3) any conduct, acts, practices or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, the relationship between the Office of the Commissioner and franchise owners, the marketing or sales of the entertainment product of organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

"(4) any conduct, acts, practices or agreements protected by Public Law 87-331 (15 U.S.C. s1291 et seq.)

(commonly known as 'the Sports Broadcasting Act of 1961');

"(5) the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons; or

"(6) any conduct, acts, practices or agreements of persons not in the business of organized professional major league baseball.

"(c) Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is –

"(1) a person who is a party to a major league player's contract, or is playing baseball at the major league level; or

"(2) a person who is a party to a major league player's contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

"(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws, provided however, that for the purposes of this paragraph, the alleged antitrust violation shall not include any conduct, acts, practices or agreements of persons in the business of organized professional baseball relating to or affecting employment to play baseball at the minor

league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

"(4) a person who was a party to a major league player's contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional major league baseball and the exclusive collective bargaining representative of major league baseball players.

"(d)(1) As used in this section, 'person' means any entity, including an individual, partnership, corporation, trust or unincorporated association or any combination or association thereof. As used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not 'in the business of organized professional major league baseball.'

"(2) In cases involving conduct, acts, practices or agreements that directly relate or affect both employment of major league baseball players to play baseball at the major league level and also relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level and the other areas set forth in subsection (b) above, only those components, portions or aspects of such conduct, acts, practices or agreements that directly relate to or affect employment of major league baseball players to play baseball at the major league level.

"(3) As used in subsection (a), interpretation of the term 'directly' shall not be governed by any interpretation of 29 U.S.C. s151 et seq. (as amended).

"(4) Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws.

"(5) The scope of the conduct, acts, practices or agreements covered by subsection (b) shall not be strictly or narrowly construed.

Mr. HATCH.

Mr. President, today I offer on behalf of myself and Senator LEAHY, the Ranking Member of the Judiciary Committee, an amendment in the nature of a substitute to S. 53, the Curt Flood Act of 1997. This bill, which was reported out of the Judiciary Committee on July 31, 1998, by a vote of 12-6, clarifies that the antitrust laws apply to labor relations at the major league level, but does not have any affect on any other persons or circumstances. Given our limited time, I will only make a few brief comments, and would ask unanimous consent that my full statement be entered into the RECORD.

In a baseball season that is likely to set records in a number of different categories, I am extremely pleased to be able to report that a truly historic milestone in the history of professional baseball has been reached. People said it would never happen, but today I can tell you that major league baseball players, along with both major and minor league club owners, have reached an agreement on a bill clarifying that the antitrust laws apply to major

league professional baseball labor relations. This agreed upon language is reflected in the substitute we are offering today.

With this historic agreement, I am confident that Congress will, once and for all, make clear that professional baseball players have the same rights as other professional athletes, and will help assure baseball fans across the United States that our national pastime will not again be interrupted by strikes. With the home run battles and exciting pennant races, baseball is enjoying a resurgence. And, as fans are returning to the ballparks, they deserve to know that players will be on the field, not mired in labor disputes. I am pleased that Congress will, it now appears, be able to help guarantee that this is the case.

Due to an aberrant Supreme Court decision in 1922, labor relations in major league baseball have not been subject to antitrust laws, unlike any other industry in America. In every other professional sport, antitrust laws serve to stabilize relations between the team owners and players unions. That is one of the principal reasons why, in recent years, baseball has experienced more work stoppages, including the disastrous strike of 1994-95, than professional basketball, hockey and football combined.

In the 103d Congress, the House Judiciary Committee took the first important step by approving legislation which would have ensured that the antitrust laws apply to major league baseball labor relations, without impacting the minor leagues or team relocation issues. During the 104th Congress, the Senate Judiciary Committee approved and reported S. 627, The Major League Baseball

Antitrust Reform Act, to apply federal antitrust laws to major league baseball labor relations. None of these bills were passed, however, as many Members of Congress were reluctant to take final action while there was an ongoing labor dispute.

With the settling of the labor dispute and with the signing of a long term agreement between the major league baseball team owners and the players union, the time was right [for] this Congress finally to address this matter. In fact, in the new collective bargaining agreement, the owners pledged to work with the players to pass legislation that makes clear that major league baseball is subject to the federal antitrust laws with regard to owner-player relations.

At the beginning of this Congress, we introduced S. 53, a bill which was specifically supported by both the players and owners and which was reported out of the Judiciary Committee almost exactly one year ago. At the Committee markup, however, several Members indicated a concern that the bill might inadvertently have a negative impact on the Minor Leagues. Although both Senator LEAHY and myself were firmly of the view that the bill as reported adequately protected the minor leagues against such a consequence, we pledged to work with the minor leagues' representatives, in conjunction with the major league owners and players, to make certain that their concerns were fully addressed.

Although this process took much longer, and much more work, than I had anticipated, I am pleased to report that it has been completed. I have in my hand a letter from the minor leagues, and a letter co-signed by Don

Fehr and Bud Selig, indicating that the major league players, and major and minor league owners, all support a new, slightly amended version of S. 53. I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF
PROFESSIONAL BASEBALL LEAGUES, INC.,
Washington, DC, July 27, 1998.
Re baseball legislation.
Hon. ORRIN HATCH,
Chairman, Senate Judiciary Committee, U.S. Senate,
Senate Dirksen Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: As you know, the National Association of Professional Baseball Leagues, Inc. ("NAPBL") objected to S. 53 as it was reported out of the Judiciary Committee last year. Since that time, we have been consulted about proposals to amend the bill to assure the continued survival of minor league baseball. We understand that a draft of an amended bill has been put forth by the major leagues and the Players' Association (copy attached) that I believe addresses the concerns of the NAPBL which we support in its final form.

Respectfully yours,

Stanley M. Brand.

July 21, 1998.
Hon. ORRIN HATCH, Chairman,
Hon. PATRICK LEAHY,
Ranking Member, Senate Judiciary Committee, U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH AND SENATOR LEAHY: As requested by the Committee, the parties represented below have met and agreed to the attached substitute language for S. 53. In particular, we believe the substitute language adequately addresses the concerns expressed by some members of the Judiciary Committee that S. 53, as reported, did not sufficiently protect the interests of the minor leagues. We understand that the minor leagues will advise you that they agree with our assessment by a separate letter.

We thank you for your leadership and patience. Although, obviously, you are under no obligation to use this language in your legislative activities regarding S. 53, we hope that you will look favorably upon it in light of the agreement of the parties and our joint commitment to work together to ensure its passage.

If you have any questions or comments, please do not hesitate to contact us.

Sincerely,
DONALD M. FEHR,
Executive Director, Major League Baseball Players Association.
ALLAN H. "BUD" SELIG,
Commissioner, Major League Baseball.

OFFICE OF THE COMMISSIONER,
MAJOR LEAGUE BASEBALL,
July 21, 1998.
DONALD M. FEHR, ESQUIRE,
Executive Director and General Counsel, Major League Baseball Players Association, New York, NY.

DEAR DON: As you know, in our efforts to address the concerns of the minor leagues with S. 53, as reported by the Senate Judiciary Committee, several changes in the bill were agreed to by the parties, i.e., the Major League Clubs, the Major League Baseball Players Association and the National Association of Professional Baseball Leagues (minor leagues). Among those changes was the addition of the word "directly" immediately before "relating to" in new subsection (a) of the bill.

This letter is to confirm our mutual understanding that the addition of that word was something sought by the Minor leagues and is intended to indicate that this legislation is not meant to allow claims by non major league players. By using "directly" we are not limiting the application of new subsection (a) to matters which would be considered mandatory subjects of bargaining in the collective bargaining context. Indeed, that is the reason we agreed to add paragraph (d)(3). There is no question that, under this Act, major league baseball players may pursue the same actions as could be brought by athletes in professional football and basketball with respect to their employment at the major league level.

I trust you concur with this intent and interpretation.

Very truly yours,
ALLAN H. SELIG,
Commissioner of Baseball.

Mr. HATCH.

This new bill specifically precludes courts from relying on the bill to change the application of the antitrust laws in areas other than player-owner relations; clarifies who has standing under the new law; and adds several provisions which ensure that the bill will not harm the minor leagues.

Senator LEAHY and I have incorporate [sic] these changes into our substitute, which, given its support across the board, we hope and expect to be passed today without objection. I urge my colleagues to adopt this substitute.

This amendment, while providing major league players with the antitrust protections of their colleagues in the other professional sports, such as basketball and football, is absolutely neutral with respect to the state of the antitrust laws between all entities and in all circumstances other than in the area of employment as between major league owners and players. Whatever the law was the day before this bill passes in those other areas it will continue to be after the bill passes. Let me emphasize that the bill affects no pending or decided cases except to the extent a court would consider exempting major league clubs from the antitrust laws in their dealings with major league players.

But because of the complex relationship between the major leagues and their affiliated minor leagues, it was

necessary to write the bill in a way to direct a court's attention to only those practices, or aspects of practices, that affect major league players. It is for that reason, that a bill that ought to be rather simple to write goes to such lengths to emphasize its neutrality. And, although much of the Report filed by the Committee with respect to S. 53 is still applicable to this substitute, there have been some changes.

Section 2 states the bill's purpose. As originally contained in S. 53, the purpose section used the word "clarify' [sic] instead of the word "state" as used in this substitute. That language had been taken verbatim from the collective bargaining agreement signed in 1997 between major league owners and major league players. When the minor leagues entered the discussions, they objected to the use of the word "clarify" on the grounds that using this term created an inference regarding the current applicability of the antitrust laws to professional baseball. The parties therefore agreed to insert in lieu thereof the word "state." Both the parties and the Committee agree that Congress is taking no position on the current state of the law one way or the other. It is also for that reason that subsection (b) was inserted, as will be discussed.

Section 3 amends the Clayton Act to add a new section 27. As was the case with S.53, as reported, new subsection 27(a) states that the antitrust laws apply to actions relating to professional baseball players' employment to play baseball at the major league level and as in S.53 is intended to incorporate the entire jurisprudence of the antitrust laws, as it now exists and as it may develop.

In order to accommodate the concerns of the minor leagues however, new subsection (a) has been changed by adding the word "directly" immediately before the phrase "relating to or affecting employment" and the phrase "major league players" has been added before the phrase "to play baseball." These two changes were also made at the behest of the minor leagues in order to ensure that minor league players, particularly those who had spent some time in the major leagues, did not use new subsection (a) as a bootstrap by which to attack conduct, acts, practices or agreements designed to apply to minor league employment. This is in keeping with the neutrality sought by the Committee with respect to parties and circumstances not between major league owners and major league players.

Additionally, the new draft adds a new paragraph (d)(3) that states that the term directly is not to be governed by interpretations of the labor laws. This paragraph was added to ensure that no court would use the word "directly" in too narrow a fashion and limit matters covered in subsection (a) to those that would otherwise be known as mandatory subjects of bargaining in the labor law context. The use of directly is related to the relationship between the major leagues and the minor leagues, not the relationship between major league owners and players. Mr. President, I have a letter from the Commissioner of Baseball, Mr. Allan H. "Bud" Selig, to the Executive Director of the Major League Baseball Players Association, confirming this interpretation of the use of the word "directly" and I ask unanimous consent that it be inserted in the RECORD at this time.

As in S. 53, as reported, new subsection (b) is the subsection which implements the portion of the purpose section stating that the "passage of the Act does not change the application of the antitrust laws in any other context or with respect to any other person or entity." In other words, with respect to areas set forth in subsection (b), whatever the law was before the enactment of this legislation, it is unchanged by the passage of the legislation. With the exception of the express statutory exemption in the area of television rights recognized in paragraph (d)(4), each of the areas set forth depend upon judicial interpretation of the law. But Congress at this time seeks only to address the specific question of the application of the antitrust laws in the context of the employment of major league players at the major league level.

Thus, as to any matter set forth in subsection (b), a plaintiff will not be able to allege an antitrust violation by virtue of the enactment of this Act. Nor can the courts use the enactment of this Act to glean congressional intent as to the validity or lack thereof of such actions.

New subsection "c" deals specifically with the issue of standing. Although normally standing under such an act would be governed by the standing provision of the antitrust laws, 15 U.S.C. Sec. 15, the minor leagues again expressed concern that without a more limited standing provision, minor league players or amateurs would be able to attack what are in reality minor league issues by bootstrapping under this Act through subsection (a). The subsection sets forth the zone of persons to be protected from alleged antitrust violations by major league owners under this Act.

New paragraph (d)(1) defines "person" for the purposes of the Act, but includes a provision expressly recognizing that minor league clubs and leagues are not in the business of major league baseball. This addition was requested by the minor leagues to ensure that they would not be named as party defendants in every action brought against the major leagues pursuant to subsection (a).

New paragraph (d)(2) was added to give the courts direction in cases involving matters that relate to both matters covered by subsection (a) and to those matters as to which the Act is neutral as set forth in subsection (b). In such a case, the acts, conducts or agreements may be challenged under this Act as they directly relates [sic] to the employment of major league players at the major league level, but to the extent the practice is challenged as to its effect on any issue set forth in subsection (b), it must be challenged under current law, which may or may not provide relief.

New paragraph (d)(5) merely reflects the Committee's intention that a court's determination of which fact situations fall within subsection (b) should follow ordinary rules of statutory construction, and should not be subject to any exceptions or departures from these rules.

As stated in the Committee Report, nothing in this bill is intended to affect the scope or applicability of the "nonstatutory" labor exemption from the antitrust laws. *See, e.g., Brown v. Pro Football,* 116 S.Ct. 2116 (1996).

Before yielding to my good friend from Vermont, I would like to thank him for his hard work on this bill. His bipartisan efforts have been vital to the process. I

would also like to thank our original cosponsors, Senators THURMOND and MOYNIHAN. I urge the quick adoption of this bill, which will help restore stability to major league baseball labor relations.

Mr. LEAHY.

Mr. President, this summer we are being treated to an exceptional season of baseball, from the record breaking pace of the New York Yankees and the resurgence of the Boston Red Sox, to a number of inspiring individual achievements, including the perfect game of David Wells and the home run displays of McGwire, Griffey and Sosa. Such are the exploits that childhood memories are made of-and which we all thought could be counted on, that is until the summer of 1994.

Now finally, after years of turmoil, major league baseball is just beginning to emerge from the slump it inflicted upon itself, by returning to that which makes the game great-the game and the players on the field. And, last weekend, Larry Doby and others at long last were inducted into the Baseball Hall of Fame. These are steps in the right direction.

Today, the Senate will give baseball another nudge in the right direction by passing S. 53, the "Curt Flood Act of 1998." Murray Chass, a gifted reporter writing for The New York Times noted that on this issue we have finally "moved into scoring position with a bill that would alter the antitrust exemption Major League Baseball has enjoyed since 1922."

I am gratified that 76 years after an aberrant Supreme Court decision, we are finally making it clear that with

respect to the antitrust laws, major league baseball teams are no different than teams in any other professional sport. For years, baseball was the only business or sport, of which I am aware, that claimed an exemption from antitrust laws, without any regulation in lieu of those laws. The Supreme Court refused to undue its mistake with respect to major league baseball made in the 1922 case of Federal Baseball. Finally, in the most well-known case on the issue, *Flood v. Kuhn*, the Court reaffirmed the Federal Baseball case on the basis of the legal principle of stare decisis while specifically finding that professional baseball is indeed an activity of interstate commerce, and thereby rejecting the legal basis for the Federal Baseball case.

Mr. President, as a result of that and subsequent decisions, and with the end of the major league reserve clause as the result of an arbitrator's ruling in 1976, there has been a growing debate as to the continued vitality, if any, of any antitrust exemption for baseball. It is for precisely this reason that this bill is limited in its scope to employment relations between major league owners and major league players. That is what is at the heart of turmoil in baseball and what is at the heart of the breach of trust with the fans that marked the cancellation of the 1994 World Series. At least we can take this small step toward ensuring the continuity of the game and restoring public confidence in it.

When David Cone testified at our hearing three years ago, he posed a most perceptive question. He asked: If baseball were coming to Congress to ask us to provide a statutory antitrust exemption, would such a bill be passed? The answer to that question is a resounding no.

Nor should the owners, sitting at the negotiating table in a labor dispute, think that their anticompetitive behavior cannot be challenged. That is an advantage enjoyed by no other group of employers.

The certainty provided by this bill will level the playing field, making labor disruptions less likely in the future. The real beneficiaries will be the fans. They deserve it.

Mr. President, I just wanted to comment briefly on a couple of changes made in the substitute from the bill as reported by the Committee. First, the changes in the language in subsection (a) are not intended to limit in any way the rights of players at the major league level as they would be construed under the language of the bill as reported by the Judiciary Committee last July. The additional language was added to ensure that a minor league player, or someone who had played at the major league level and returned to the minor leagues, cannot use subsection (a), concerned with play at the major league level, to attack what is really a minor league employment issue only. Alternatively, neither can the major leagues use the wording of subsection (a) and that of subsection (d) to subvert the purpose of subsection (a) merely by linking a major league practice with a minor league practice. That linkage itself may be an antitrust violation and be actionable under this Act. It cannot be used as a subterfuge by which to subject players at the major league level to acts, practices or agreements that teams or owners in other sports could not subject athletes to.

Finally, the practices set forth in subsection (b) are not intended to be affected by this Act. While this is true,

it should be remembered that although the pure entrepreneurial decisions in this area are unaffected by the Act, if those decisions are made in such a way as to implicate employment of major league players at the major league level, once again, those actions may be actionable under subsection (a). More importantly, we are making no findings as to how, under labor laws, those issues are to be treated.

In closing, Mr. President, I would like to thank all those involved in this undertaking: Chairman HATCH, of course, without whose unfailing efforts this result would not be possible; our fellow cosponsors, Senators THURMOND and MOYNIHAN, and other members of our Committee; and JOHN CONYERS, the Ranking Democrat on the House Judiciary Committee, for making this bill a priority. And I want to commend the interested parties for working to find a solution they can all support. Not only have they done a service to the fans, but they may find, on reflection, that they have done a service to themselves by working together for the good of the game.

Finally, Mr. President, I would be remiss if I did not comment on the man for whom this legislation is named, Curt Flood. He was a superb athlete and a courageous man who sacrificed his career for perhaps a more lasting baseball legacy. When others refused, he stood up and said no to a system that he thought un-American as it bound one man to another for his professional career without choice and without a voice in his future.

I am sad that he did not live long enough to see this day. In deference to his memory and in the interests of every fan of this great game, I hope that Congress will act

quickly on this bill. I am delighted that we are moving forward today and that we are finally able to enjoy the game once again.

Mr. JEFFORDS.

I ask unanimous consent the amendment be considered as read and agreed to, the bill be considered read a third time and passed as amended, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER.

Without objection, it is so ordered.

The amendment (No. 3479) was agreed to.

The bill (S. 53), as amended, was considered read a third time and passed.